



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102

Telephone No. (505) 766-6381

Contract Number: 40-000-14-00061

Contract Amendment No.: Six

Term: May 1, 2014 – April 30, 2022

Ship to:
New Mexico Department of Finance and
Administration
Bataan Memorial Building, Suite 181
Santa Fe, NM 87501

Procurement Specialist: Savannah Quintana

Telephone No.: (505) 827-0483

Email: Savannah.Quintana@state.nm.us

Invoice:
Same as "Ship To"

For questions regarding this Contract please contact:

Irene Sanchez (505) 827-4997

Title: **Fiscal Agent Bank Services**

This Contract Amendment is to be attached to the respective contract and become a part thereof.

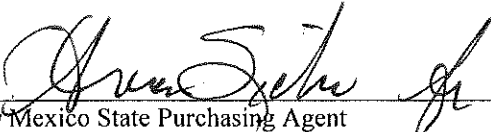
This amendment is issued to reflect the following effective:

In accordance with Contract provisions, and by mutual agreement of all parties, this Contract is extended from May 1, 2020 to April 30, 2022 at the same price, terms and conditions.

See attached for additional details.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent
Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
SQ

Date: 12/24/2018



SIXTH AMENDMENT TO THE FISCAL AGENT BANKING SERVICES AGREEMENT
BETWEEN THE STATE BOARD OF FINANCE OF THE STATE OF NEW MEXICO
AND WELLS FARGO BANK

THIS AMENDMENT (“Amendment”) is by and between the State Board of Finance of the State of New Mexico (the “Board”) and Wells Fargo Bank (the “Bank”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Fiscal Agent Banking Services Contract.

WHEREAS, the Board and the Bank entered into Fiscal Agent Banking Services Contract SPD #40-000-14-00061 dated effective May 1, 2014 (“the Agreement”) which will expire on April 30, 2020;

WHEREAS, under the terms of the Agreement, the Board has three (3) two-year options to extend the term of the Agreement under the same terms and conditions set forth in the Agreement and to date the Board has exercised two of those options;

WHEREAS, the Board wishes to exercise the third and final option to extend the term of the Agreement for an additional two years.

WHEREAS, the Agreement may be amended by written instrument executed by the Board and the Bank;

WHEREAS, the Board and the Bank further wish to amend the Agreement to extend the term of the Agreement for an additional two – year term;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereto hereby agree as follows:


1. Section 6 of the Agreement (Term) is amended as follows:

This Agreement shall not become effective until approved in writing by Board Counsel and the State Purchasing Agent. Subject to such approval, the term shall begin on May 1, 2014 and shall terminate on April 30, 2022, unless earlier terminated pursuant to the terms of Section 7.

Except as specifically amended by this Amendment, all terms and conditions of the Fiscal Agreement, including Contract Amendment Numbers One, Two, Three, Four and Five thereto, shall remain unchanged and in full force and effect. This Amendment will become effective upon approval of the State Purchasing Agent (“Effective Date”).

IN WITNESS WHEREOF, the parties have caused their respective representatives to execute this Amendment as of the Effective Date.

STATE OF NEW MEXICO
STATE BOARD OF FINANCE



Susana Martinez, Governor and President of
the State Board of Finance

WELLS FARGO BANK



(Name, Title) MARK A. JENSEN
SENIOR VICE PRESIDENT

11/30/18

(Date)

Board Counsel - Certifying Legal Sufficiency:


Sally Malave, Assistant Attorney General

11/30/2018
(Date)

THIS CONTRACT AMENDMENT has been approved by the General Services Department,
State Purchasing Division.

NEW MEXICO GENERAL SERVICES DEPARTMENT

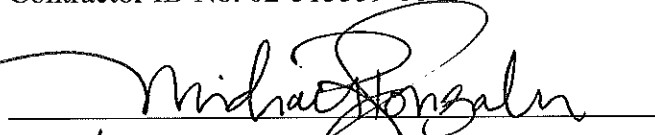

State Purchasing Agent

12/27/18
(Date)

The records of the State of New Mexico Department of Taxation and Revenue ("TRD") reflect that the Bank is registered with TRD to pay gross receipts and compensation taxes.

NEW MEXICO TAXATION AND REVENUE
DEPARTMENT
Contractor ID No. 02-313359-00-7


Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.



11/30/2018
(Date)

THE FOLLOWING, while not a party to the Fiscal Services Agreement, has reviewed this Amendment.

STATE TREASURER



Tim Eichenberg
12/14/18
(Date)



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102


Telephone No. (505) 766-6381

Contract Number: 40-000-14-00061

Contract Amendment No.: Five

Term: May 1, 2014 – April 30, 2020

Ship to:
New Mexico Department of Finance and Administration
Bataan Memorial Building, Suite 181
Santa Fe, NM 87501

Procurement Specialist: Savannah Quintana 

Telephone No.: (505) 827-0483

Email: Savannah.Quintana@state.nm.us

Invoice:
Same as "Ship To"

For questions regarding this Contract please contact:

Irene Sanchez (505) 827-4997

Title: **Fiscal Agent Bank Services**

This Contract Amendment is to be attached to the respective contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

Part II, Section 4, of the Merchant Services Program Guide, Exhibit B is deleted and replaced, with Exhibit 1, attached.

See attached for additional details.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

Date: 9/25/2018

New Mexico State Purchasing Agent
Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
SQ

FIFTH AMENDMENT TO THE FISCAL AGENT SERVICES AGREEMENT
BETWEEN THE STATE BOARD OF FINANCE OF THE STATE OF NEW MEXICO
AND WELLS FARGO BANK

This Contract Amendment (the "Amendment") to the Fiscal Agent Agreement (defined below), which includes Exhibit B (as defined below), and the schedules thereto and documents incorporated therein, each as amended from time to time (collectively, the "Agreement") is entered into on the last date signed below (the "Effective Date") between **WELLS FARGO MERCHANT SERVICES, L.L.C.**, with offices at 1307 Walt Whitman Road, Melville, NY 11747 and **WELLS FARGO BANK, N.A.**, with offices at 1200 Montego, Walnut Creek, CA 94598 (collectively, "Wells Fargo") and **THE STATE OF NEW MEXICO (THE "STATE") STATE BOARD OF FINANCE**, with offices located at 407 Galisteo Street, Ste. 181, Santa Fe, NM 87501 (hereinafter referred to collectively as "BOARD").

WHEREAS, on May 1, 2014, the State of New Mexico State Board of Finance executed a Fiscal Agent Banking Services Contract #: 40-000-14-00061, (the "Fiscal Agent Agreement") with the Wells Fargo Bank N.A. ("Wells Fargo") to provide banking, treasury management and merchant services to its agencies.¹ The State of New Mexico (acting through its State Board of Finance), Wells Fargo Bank, N.A., and Wells Fargo Merchant Services, L.L.C. entered into Exhibit B of the Fiscal Agent Agreement titled Merchant Services Agreement, (the "Exhibit B").

WHEREAS, with regard to the provision of merchant services, Wells Fargo provides product solutions and serves as the acquirer of card payment transactions on behalf of the Board for authorization and settlement with the Card Organizations, and third parties may provide product solutions to the Board as long as the products are certified to a platform permissible to Wells Fargo.

WHEREAS, the intent of Exhibit B is that the Board will utilize Wells Fargo exclusively for the products and services thereunder. The initial term of Exhibit B was for two years, expiring on April 30, 2016, with the option thereafter for the Board to extend for up to three (3) additional two-year terms. The second of three options to extend the Agreement for 2 years was exercised, and the current expiration date is April 30, 2020.

1. Part II, Section 4, of the Merchant Services Program Guide in Exhibit B, is hereby amended by deleting it in its entirety and replacing it with the following:

"During the term of this Agreement, you shall use us as your exclusive provider of all Services, and as the exclusive merchant services provider to the Board, if an agency chooses to accept card payments in its business, it must do so utilizing us under the terms of the Merchant Agreement. Failure to do so shall be a material breach of the Merchant Agreement and will likely result in an increase in pricing, as set forth in Section 5.4."

¹ The Revised Fourth Amendment to the Fiscal Services Agreement changed the Agreement's contract number from #30-341-13-09855 to # 40-000-14-00061

2. The parties further here explicitly understand and agree that our pricing to the State is based upon, as set forth in Section 5.4, in pertinent part as follows, "...assumptions associated with the anticipated annual volume and average transaction for all Services...", and as defined in the Wells Fargo Merchant Services, L.L.C. – (WFMS - Pricing Terms) (the "Pricing") set forth in Exhibit B. This was the minimum sales volume required by Wells Fargo in order for the Board, the State, or any Agency of the State, to receive the Pricing. Section 5.4 of the Merchant Services Program Guide in Exhibit B further provides that "[i]f the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your fees for Services...". The parties now understand that anticipated volume of card payment sales upon which the Pricing was based will be lower than what was originally estimated for the Pricing. The parties hereby agree that the minimum sales volume is now adjusted to \$42,900,000, and as a result, the pricing structure shall change to fit with the adjusted minimum sales volume.

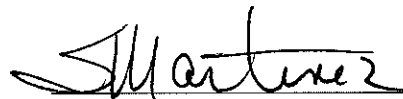
3. The parties hereby agree that as a result of the decrease in anticipated card payment sales volume to \$42,900,000, the existing Pricing (dated 09/17/13) as set forth in Exhibit B shall be replaced with the attached Exhibit 1 - Wells Fargo Merchant Services, L.L.C. – ("WFMS") – Pricing Terms dated 06/11/18.

All other provisions of the Fiscal Agent Agreement and its Exhibit B shall remain unchanged and in full force and effect.

By signing this Amendment, you affirm your understanding of and commitment to the above-described terms.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment as of the date below.

STATE OF NEW MEXICO
STATE BOARD OF FINANCE



Susana Martinez, Governor and President of
the State Board of Finance

WELLS FARGO BANK



(Name, Title)
MARK A. JENSEN, SENIOR VICE PRESIDENT

8/28/18
(Date)

Board Counsel - Certifying Legal Sufficiency:

Sally Malavé
Sally Malavé, Assistant Attorney General
08/31/2018
(Date)

THIS CONTRACT AMENDMENT has been approved by the General Services Department,
State Purchasing Division.

NEW MEXICO GENERAL SERVICES DEPARTMENT

[Signature]
State Purchasing Agent
9/25/2018
(Date)

The records of the State of New Mexico Department of Taxation and Revenue ("TRD") reflect
that the Bank is registered with TRD to pay gross receipts and compensation taxes.

NEW MEXICO TAXATION AND REVENUE
DEPARTMENT
Contractor ID No. 02-313359-00-7

[Signature]
8/31/18
(Date)

Taxation and Revenue is only verifying the registration
and will not confirm or deny taxability statements
contained in this contract.

THE FOLLOWING, while not a party to the Fiscal Services Agreement, has reviewed this Amendment.

STATE TREASURER



Tim Eichenberg

9/2/18

(Date)

EXHIBIT 1

Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms

State of New Mexico / 227965047995

Proposal Date: 06/11/18

Account Manager: Patty White

Assumptions	
Credit Card Volume	See Table A Below
Average Transaction Size	\$114
Number of Locations	77
Anticipated Interchange ¹¹ Levels	Public Sector: 032 020/038/307 Emerging Markets: 013 011/038/306 Retail: 001 009/023/310 MOTO w/ AVS (CNP): 003 011/034/314 Internet: 020 089/077/317
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately Frame Relay / Dial / IPN
Gateway	Authorize.net / PayPal Payflow Pro / Other Gateway - Direct Bill to Client
Pricing Option	Interchange + Assessments + Authorizations

Credit Card Processing Fees ¹
Interchange Plus the Following Fees:

Table A:

1	2	3
Pricing Tier	Annual Net Visa ® / MasterCard ® / Discover ® Network Card Sales Volume	Visa / MasterCard / Discover Network Card (Credit and Non-PIN Debit) Authorization/EDC Fee
1	\$42,900,000 - \$82,844,428	\$0.09
2	\$82,844,429 - \$122,725,000	\$0.065
3	\$122,725,001 and up	\$0.045

Rate (see Table A - column 3) is Assessed on Gross Visa, MasterCard and Discover Network Card Sales

PIN Debit & Electronic Benefits Transfer (EBT) Processing Fees

\$0.20 Per PIN Debit Transaction (applies to completed and declined transactions)

EBT NOT ENTITLED

Applicable PIN Debit Network, Switch, Service and Administrative fees are passed through on all PIN Debit transactions (completed and declined). Applicable PIN Debit Network Interchange fees are passed through on completed PIN Debit transactions only.

Applicable Fee Schedules:

Payment Networks Qualification Matrix <https://www.wellsfargo.com/biz/creditinterchangeplus>

Payment Networks Pass-Through Fees <https://www.wellsfargo.com/biz/merchantpassthroughfees>

Wells Fargo Fixed Acquirer Network Fee for Visa® Accepting Merchants <https://www.wellsfargo.com/visanetworkfee>

PIN Debit Networks Fee Schedule (if applicable) <https://www.wellsfargo.com/biz/merchantdebitfees>

Dues, assessments and pass-through fees are disclosed in the schedules above.

Fee schedules are updated periodically. To obtain the current applicable fee schedules, please refer to the URLs above for more information. If you do not have internet access, please contact your Merchant Card Representative and request that a copy of the applicable fee schedules be mailed or faxed to you.

As noted in your Merchant Agreement, Payment Networks change their rates/fees from time to time. They are likely to revise rates/fees on 10/13/2018. To learn more about impacts to fee schedules resulting from Payment Network changes, please visit the URLs above or request an updated schedule.

Other Processing Fees

Set-Up Fee	\$	-	per location
Monthly Minimum Processing Fee ⁹	\$	-	per month
Chargeback Fee ²	\$	15.00	per chargeback
Monthly Internet Service Fee (Applies to any location utilizing an Internet Gateway Purchased through WFMS)	\$	20.00	per month
Wireless Monthly Access Fee (per terminal)	\$	15.00	per month
Clover™ Services Fees (per Device ID) ¹⁴	\$	69.00	per month
Statement Billing Fee (Paper Statement) ⁷	\$	-	per month
ACH Reject Fee	\$	10.00	per reject
Voice Authorization Fee	\$	0.75	per attempt
Annual Fee	\$	-	per location
Authorization/EDC Fee - Visa, MasterCard, Discover Network Card (Credit and Non-PIN Debit) ³		varies	(see Table A - column 3)
Authorization/EDC Fee - American Express (Credit and Prepaid) ³		N/A	per attempt
Interchange Clearing Fee ¹²			
Applies to Visa, MasterCard, Discover Network Card (Credit and Non-PIN Debit) and American Express (Credit and Prepaid)			N/A on gross sales volume
Electronic Address Verification Service Fee	\$	0.01	per attempt
Voice (Manual) Address Verification Fee	\$	2.00	per attempt
Annual Compliance Support Fee ⁵	\$	-	per location
PCI Compliance Service Program Fee ⁸	\$	-	per month, per location

Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms

State of New Mexico / 227965047995

Proposal Date: 06/11/18

Account Manager: Patty White

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MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	fine charges quoted separately Frame Relay / Dial / IPN
Gateway	Authorize.net / PayPal Payflow Pro / Other Gateway - Direct Bill to Client
Pricing Option	Interchange + Assessments + Authorizations

Other Processing Fees Continued

Non-validation PCI Compliance Fee ⁸	\$	25.00	per month, per location
Foreign Handling Fee (on non-US issued Visa/MasterCard transactions/sales)		0.10%	per transaction amount
TransArmor Token & Encrypt ¹³	\$	0.02	per attempt
American Express EDC and Discover EDC Authorization ⁶	\$	0.09	per attempt
American Express EDC and Discover EDC Capture	\$	0.03	per attempt
Terminal Reprogramming Fee (Terminal) - Applies to Customer Owned Terminals Only	\$	75.00	per unit
Terminal Reprogramming Fee - Integrated Terminal - Applies to Customer Owned Integrated Terminals Only	\$	150.00	per unit
Security Swap Fee for PIN Debit - Applies to Customer Owned PIN Pads Only	\$	110.00	per unit
Card Imprinter Option	\$	35.00	per unit
Rush Shipping Option			N/A

1) Clients may elect to participate in the Discover Network Card program or the Discover EDC program, but not both. Under the "Discover Network Card program," Clients receive all Discover-related authorization, processing and settlement services from WFMS. Under the "Discover EDC program," Clients enter into a direct agreement with Discover, and WFMS provides only authorization and capture services related to Discover Network Cards. Clients may also elect to participate in the American Express program or the American Express EDC program, but not both. Under the "American Express program," Clients receive all American Express-related authorization, processing and settlement services from WFMS. Under the "American Express EDC program," Clients enter into a direct agreement with American Express, and WFMS provides only authorization and capture services related to American Express Cards. In all cases, any services provided by WFMS for Discover and American Express transactions are subject to the terms of Client's Agreement with WFMS.

2) Client acknowledges and understands that an authorization only indicates the availability of the Cardholder's credit at the time the authorization is requested. It does not warrant that the person presenting the card is the rightful Cardholder, nor is it an unconditional promise or guarantee that Client will not be subject to a chargeback or debit.

3) Authorization/EDC Fee applies to all Visa, MasterCard, Discover Network Card and American Express approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries, batch entry transactions and includes any transaction fees and capture fees. This fee does not apply to Discover EDC and American Express EDC.

5) The Annual Compliance Support Fee will be assessed and deducted from Client's Settlement Account at each anniversary date after the effective date.

6) American Express EDC/Discover EDC Authorization Fees apply to all approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries and batch entry transactions.

7) The monthly Statement Billing Fee can be waived if Client elects to access the monthly statement online instead of receiving a paper copy by mail. After Business Track access has been activated, please contact Customer Service at 1-800-451-5817 to request that paper statements no longer be mailed. If Business Track access is terminated by Client or as a result of inactivity, paper statements will be reinstated with the applicable monthly Statement Billing Fee. Enroll anytime at businesstrack.com.

8) The monthly PCI Compliance Service Program Fee and Non-validation PCI Compliance Fee are part of the mandatory PCI Compliance Service Program. These fees apply to Level 4 Clients who utilize a gateway or value added reseller (VAR). The program includes access to TrustKeeper, a Trustwave PCI Compliance solution to help Client comply with the Payment Card Industry Data Security Standards (PCI DSS) requirements. Clients are required to register and complete a PCI DSS certification process by visiting <https://pci.trustwave.com/wellsfargo>. If Client does not comply or fails the PCI DSS certification process, Client will be charged a monthly Non-validation PCI Compliance Fee until the account becomes compliant.

9) If the total discount fee billed to the Client for Visa, MasterCard, Discover Network Card and American Express transactions in one month is less than the Monthly Minimum Processing Fee, then an additional fee will be charged to the Client equal to the Monthly Minimum Processing Fee less the total discount fee.

11) American Express charges Program Pricing fees and not interchange. Program Pricing fees and interchange fees are subject to change.

12) The Interchange Clearing Fee (ICF) will be charged on transactions that may be considered higher risk and/or are processed at a higher expense level. These types of transactions can be identified on Client's Payment Networks Qualification Matrix by looking at the "ICF applies" column. If the interchange program level has been identified by a "YES" in this column, then the ICF will apply to that type of transaction.

Merchant Initials 

Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms

State of New Mexico / 227965047995

Proposal Date: 06/11/18

Account Manager: Patty White

Assumptions	
Credit Card Volume	See Table A Below
Average Transaction Size	\$114
Number of Locations	77
Anticipated Interchange ¹¹ Levels	Public Sector: 032 020/038/307 Emerging Markets: 013 011/038/306 Retail: 001 009/023/310 MOTO w/ AVS (CNP): 003 011/034/314 Internet: 020 089/077/317
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately Frame Relay / Dial / IPN
Gateway	Authorize.net / PayPal Payflow Pro / Other Gateway - Direct Bill to Client
Pricing Option	Interchange + Assessments + Authorizations

13) A TransArmor authorization fee that applies to Visa, MasterCard and Discover Network Card (Credit and Non-PIN Debit), Discover EDC, American Express, American Express EDC, PIN Debit and EBT authorizations. Based on your current processing, the TransArmor authorization fee will be billed under the statement descriptor, "TransArmor Token & Encrypt". However, if your processing method changes, the TransArmor authorization fee may be billed under one or more of the following statement descriptors: (i) TransArmor Token & Encrypt, (ii) TransArmor Token Only or (iii) TransArmor Token Registration.

14) If Client purchases or leases the Clover Flex, Clover Mobile and/or the Clover Mini device(s) and does not have a Clover Station on the same merchant account number, then the Clover Services Fee does not apply and will not be charged. If Client purchases or leases the Clover Flex, Clover Mobile and/or the Clover Mini device(s) with the Clover Station(s) or already has the Clover Station(s) on the same merchant account number, then the Clover Services Fee will apply only to the Clover Station(s).

If Client has selected to accept TeleCheck Services, see Part III - Section 1 of the Program Guide for the terms and conditions. If applicable, the Additional Services page will contain the fees and rates billed to Client by TeleCheck.

If Client does not follow proper authorization procedures, a \$50 chargeback handling fee will be assessed on MasterCard transactions.

American Express may charge Client an excessive disputes fee in the amount of \$5 for each Disputed Charge if Client is in American Express' Immediate Chargeback Program or \$15 for each Disputed Charge if Client is not in the Immediate Chargeback Program.

Client is responsible for any charges assessed by outside third parties that are not disclosed on the proposal. To the extent that this pricing proposal includes pricing for third party products and services, WFMS disclaims legal liability and responsibility for said products and services. Client's agreement with the third party provider shall govern Client's relationship with the third party provider. In the event that WFMS is billed for the third party's services, Client will reimburse WFMS for such services.

Client acknowledges and understands that WFMS shall have no responsibility or liability for any third party hardware or software procured and used by Client. To the extent Client has any issues, concerns or liability related to such hardware or software, Client must deal directly with the third party provider from whom Client procured the hardware or software. In no event will WFMS be responsible for any indirect, incidental or consequential damages that Client may incur as a result of using any third party hardware or software.

WFMS' proposal and associated pricing is based on the information provided. Any difference to our stated understanding may affect the proposed pricing. Without a signed agreement, this proposal expires 60 days from the proposal date stated above.

See Section 42.3 of the Program Guide for early termination fees.

Rounding. In the event the amount being billed to Client for any line item on this pricing proposal includes a total ending in less than a full cent, WFMS will either round such amount up or down to the nearest cent.

Fees for supplies, shipping, handling, and applicable sales tax may apply and are subject to change without notice. Additional information is available upon request.

By acknowledging these Pricing Terms, Client is expressly agreeing that WFMS may share all of Client's personally identifiable information (for example, postal and email addresses, tax identification numbers, names and social security numbers of the authorized signer on the Client's Agreement with WFMS, account information, etc.), as well as Client's American Express transaction information (for example, all information required by American Express evidencing charges or credits, including information obtained at the point of sale, information obtained or generated during authorization and settlement, and any chargeback or other fee information related to an American Express payment card transaction), with American Express. American Express may use and share this information to perform its responsibilities in connection with the American Express payment card acceptance services that Client receives under the Client's Agreement with WFMS. American Express may also use and share this information to promote the American Express Network, to perform analytics and create reports, and for any other lawful business purpose including to call Client or send Client communications or materials via direct mail, email, SMS, text or facsimile regarding American Express products, services and resources available to Client. Client consents and agrees to receive autodialed, automated and/or prerecorded calls and communications (which may include SMS or text messages) at the telephone number(s) Client has provided. If Client has provided a fax number, Client consents and agrees to receiving fax communications from American Express. In connection with the foregoing, Client understands that the calls made or communications sent to Client by American Express may be subject to charges or fees by Client's telecommunications or other applicable service provider that are Client's responsibility to pay. If Client does not wish to receive marketing or other communications from American Express, or if Client wishes to discontinue accepting American Express payment cards, Client must contact WFMS at 1-800-451-5817 to disable Client's American Express acceptance services, and Client will no longer be permitted to accept American Express payment cards.

Merchant Initials 

Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms

State of New Mexico / 227965047995

Proposal Date: 06/11/18

Account Manager: Patty White

Assumptions	
Credit Card Volume	See Table A Below
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MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately Frame Relay / Dial / IPN
Gateway	Authorize.net / PayPal Payflow Pro / Other Gateway - Direct Bill to Client
Pricing Option	Interchange + Assessments + Authorizations

The Operating Procedures include summaries of some of the key rules and regulations from the Card Payment Networks that merchants must adhere to in connection with their card acceptance practices. For example, they describe the process for submitting card transactions for payment, obtaining authorizations, responding to chargebacks and media retrieval requests, and other aspects of our services. Client is required to comply with these Operating Procedures in addition to all other applicable payment network rules. THE OPERATING PROCEDURES ALSO INCLUDE ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO CLIENT'S AMERICAN EXPRESS CARD ACCEPTANCE. BY ACCEPTING AMERICAN EXPRESS CARDS AFTER THE EFFECTIVE DATE OF THESE PRICING TERMS, CLIENT IS EXPRESSLY AGREEING THAT THE TERMS AND CONDITIONS OF CLIENT'S AGREEMENT WITH WFMS, INCLUDING THE TERMS AND CONDITIONS OF THE OPERATING PROCEDURES, ALSO APPLY TO CLIENT'S AMERICAN EXPRESS ACCEPTANCE. To obtain the latest copy of the Operating Procedures that includes updates from American Express, please download them from this website: www.wellsfargo.com/merchantoperatingguide. Client may also contact WFMS at 1-800-451-5817 to request a paper copy of the Operating Procedures.


Additional Notes:	
MCC Code	MCC Description
9399	GOVERNMENT SERVICES, NOT ELSEWHERE
8299	SCHOOLS & EDUCATIONAL SVCS
7991	TOURIST ATTRACTIONS & EXHIBITS

Qualifications for Credit Card and Non-PIN Debit Sales Volume Tier Pricing (Visa, MasterCard and Discover Network Card Sales):
Pricing is based on annual Net Visa, MasterCard, Discover Network Card sales volume ("Sales Volume"). WFMS will begin this Client's price at the tier 1 price (see Table A on page 1). After Client has 3 months of processing for a full calendar quarter, the applicable pricing tier will be reviewed quarterly based on the quarterly Sales Volume using the timeframes provided in Table B. The timing for when the tier / pricing may be changed (increased or decreased), is listed in Table B. Table C below contains the quarterly Sales Volume requirements to qualify for each pricing tier.

Time period used to calculate the quarterly sales volume:	Quarterly review will occur in the following months:	Pricing Tier (increase or decrease) will become effective on:
January 1 – March 31	April	May 1
April 1 – June 30	July	August 1
July 1 – September 30	October	November 1
October 1 – December 31	January	February 1

Pricing Tier	Quarterly Net Sales Volume Requirement:	Calculation for Quarterly Net Sales Volume Requirement:
Tier 1	\$10,725,000	\$42,900,000 divided by 4 quarters
Tier 2	\$20,711,107	\$82,844,429 divided by 4 quarters
Tier 3	\$30,681,251	\$122,725,001 divided by 4 quarters

I ACKNOWLEDGE THAT I SIMULTANEOUSLY HEREWITH HAVE RECEIVED AND REVIEWED PROGRAM GUIDE WFB2009 AND AGREE TO THE TERMS THEREIN.

Merchant Initials: 

Processing Solutions			
Type	Quantity	Financing Method	Total w/o TAX

Signature Page Follows

Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms

State of New Mexico / 227965047995

Proposal Date: 06/11/18

Account Manager: Patty White

Assumptions	
Credit Card Volume	See Table A Below
Average Transaction Size	\$114
Number of Locations	77
Anticipated Interchange ¹¹ Levels	Public Sector: 032 020/038/307 Emerging Markets: 013 011/038/306 Retail: 001 009/023/310 MOTO w/ AVS (CNP): 003 011/034/314 Internet: 020 089/077/317
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately Frame Relay / Dial / IPN
Gateway	Authorize.net / PayPal Payflow Pro / Other Gateway - Direct Bill to Client
Pricing Option	Interchange + Assessments + Authorizations

Merchant Signature:



Date:

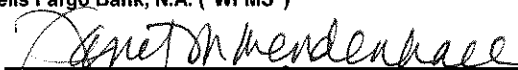
08/3/2018

Print Name:

Donna Maestas

Wells Fargo Merchant Services, L.L.C., and Wells Fargo Bank, N.A. ("WFMS")

By:



Title:

Senior Vice President

Print Name:

Janet M. Mendenhall

Date:

8/30/2018



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102

Telephone No. (505) 766-6381

Contract Number: 40-000-14-00061

Contract Amendment No.: Four

Term: May 1, 2014 – April 30, 2020

Ship to:
New Mexico Department of Finance and Administration
Bataan Memorial Building, Suite 181
Santa Fe, NM 87501

Procurement Specialist: Savannah Quintana

Telephone No.: (505) 827-0483

Invoice:
Same as "Ship To"

For questions regarding this Contract please contact:

Irene Sanchez (505) 827-4997

Title: **Fiscal Agent Bank Services**

This Contract Amendment is to be attached to the respective contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

In accordance with Contract provisions, and by mutual agreement of all parties, this Contract is extended from May 1, 2016 to April 30, 2020 at the same price, terms and conditions.

See attached for additional details.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 6/12/2017

REVISED FOURTH AMENDMENT TO THE FISCAL AGENT SERVICES AGREEMENT
BETWEEN THE STATE BOARD OF FINANCE OF THE STATE OF
NEW MEXICO AND WELLS FARGO BANK

THIS AMENDMENT (“Amendment”) is by and between the State Board of Finance of the State of New Mexico (the “Board”) and Wells Fargo Bank (the “Bank”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Fiscal Agent Banking Services Contract.

WHEREAS, the Board and the Bank entered into Fiscal Agent Banking Services Contract SPD #30-341-13-09855 dated effective May 1, 2014 (“the Agreement”) which will expire on April 30, 2018;

WHEREAS, under the terms of the Agreement, the Agreement may be amended by written instrument executed by the Board and the Bank;

WHEREAS, the Board and the Bank further wish to amend the Agreement to extend the term of the Agreement for an additional two (2) years, clarify which entities may participate in this Agreement, and authorize participation in the State Tax Refund Return Opt-In Program;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereto hereby agree as follows:

1. Change the Agreement contract number from SPD #30-341-13-09855 to SPD #40-000-14-00061 to conform to the Statewide Pricing Agreement number in SHARE, the statewide accounting system.

2. The following local entities have been participating and are approved to participate in the Agreement:

- Bernalillo County
- City of Rio Rancho
- New Mexico Mortgage Finance Authority
- San Juan County
- Santa Fe Community College
- Albuquerque Public Schools
- University of New Mexico Hospital
- University of New Mexico Medical Group

3. Section 3 of the Agreement (Definitions) is amended in part to read:

A. “Agency” means each department, agency, branch, commission, board, instrumentality, and institution of government of the State of New Mexico, including those political subdivisions of the state or local government entities designated in writing by the director of the Board.

L. "State" means the departments, agencies, branches, commissions, boards, instrumentalities and institutions of government of the State of New Mexico, and only those political subdivisions of the state or local government entities designated in writing by the director of the Board.

4. Section 6 of the Agreement (Term) is amended as follows:

This Agreement shall not become effective until approved in writing by Board Counsel and the State Purchasing Agent. Subject to such approval, the term shall begin on May 1, 2014 and shall terminate on April 30, 2020, unless earlier terminated pursuant to the terms of Section 7.

5. Section 11 of the Agreement (Contract Administrators) is amended as follows:

A. The director of the Board shall serve of the Board's contract administrator to ensure that the terms of this Agreement are observed and that services are timely provided. No Agency shall participate in this Agreement without the prior written approval of the director of the Board.

B. The Bank shall designate in writing a contract administrator who shall have authority to ensure that the terms of this Agreement are observed and that services are timely provided.

6. Section 27 (Scope of Work), subsection L (Credit and Debit Card Services) is amended in part to read:

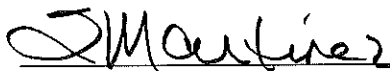
The Bank shall provide credit and/or debit card processing services, upon prior written approval of the director of the Board, to any Agency so requesting, subject to the terms and conditions set out in this subsection and those contained in the Merchant Services Operating Procedures as modified, attached hereto as Exhibit B. The Bank shall provide authorization services to those Agencies desiring to accept American Express cards, upon prior written approval of the director of the Board, as to the agreement between the State and American Express, as amended, attached hereto and incorporated as Exhibit F to this Agreement (the "Exhibit F Agreement"). The term of the Exhibit F Agreement shall run concurrently with the Agreement, which ends on April 30, 2020, subject to earlier termination pursuant to Section 7 of the Agreement or extension, upon mutual agreement of the State and American Express, pursuant to the Exhibit F Agreement, which provides that in no event may it extend beyond December 1, 2020.

7. The ACH Origination Service Description incorporated within Exhibit E to the Agreement is amended to include and shall include the "Addendum to ACH Origination Service Description for State Tax Refund Return Opt-on Program Participants" attached hereto.

Except as specifically amended by this Amendment, all terms and conditions of the Fiscal Agreement, including Contract Amendment Nos. One, Two and Three thereto, shall remain unchanged and in full force and effect. This Amendment will become effective upon approval of the State Purchasing Agent ("Effective Date").

IN WITNESS WHEREOF, the parties have caused their respective representatives to execute this Amendment as of the Effective Date.

STATE OF NEW MEXICO
STATE BOARD OF FINANCE



Susana Martinez, Governor and President of
the State Board of Finance

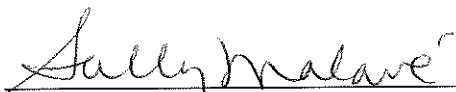
WELLS FARGO BANK



(Name, Title)
MARK A. JENSEN, SR. VICE PRESIDENT

5/17/17
(Date)

Board Counsel - Certifying Legal Sufficiency:

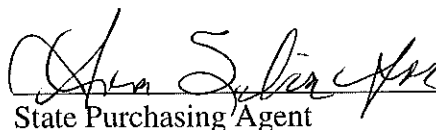


Sally Malavé, Assistant Attorney General

May 19, 2017

THIS AMENDMENT has been approved by the General Services Department, State Purchasing Division.

NEW MEXICO GENERAL SERVICES DEPARTMENT



State Purchasing Agent

6/12/17
(Date)

The records of the State of New Mexico Department of Taxation and Revenue ("TRD") reflect that the Bank is registered with TRD to pay gross receipts and compensation taxes.

NEW MEXICO TAXATION AND REVENUE
DEPARTMENT
Contractor ID No. 02-313359-00-7

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

Nicole Vigil

5/18/17
(Date)

THE FOLLOWING, while not a party to the Fiscal Services Agreement, has reviewed this Amendment and found it acceptable.

STATE TREASURER

Tim Eichenberg

5/26/17
(Date)



Addendum to ACH Origination Service Description for State Tax Refund Return Opt-in Program Participants

- 1. Introduction.** This Addendum to ACH Origination Service Description for State Tax Refund Return Opt-In Program Participants ("Addendum") applies to Company in connection with its use of the ACH origination service ("Service") pursuant and subject to the terms of the Service Documentation, including the ACH Origination Service Description ("Service Description"). If there are any conflicts between this Addendum and the Service Description, this Addendum shall control. Any capitalized terms not otherwise defined in this Addendum shall have the meaning set forth in the Service Description or the ACH Rules, unless otherwise indicated.
- 2. Description of Program Services.** Company has agreed to participate in the State Tax Refund Return Opt-In Program ("Program") offered by NACHA—The Electronic Payments Association ("NACHA"), through which participating RDFIs can submit Return Entries to Company under operating rules adopted specifically for the Program. In connection with Company's participation in the Program, Company has requested that Bank enter into a State Tax Refund Return Opt-In Program ODFI Agreement with NACHA ("ODFI Agreement"). The ODFI Agreement permits Bank, as ODFI for Company, to receive Return Entries transmitted under an R17 return reason code in accordance with the operating rules adopted for the Program and the ACH Rules (collectively, "Program Rules"). Bank will provide "Program Services" under this Addendum in accordance with its obligations under the ODFI Agreement. In the event of a conflict among the foregoing requirements, the following order of precedence shall apply: (1) the ODFI Agreement; (2) the Program Rules; and (3) the ACH Rules.
- 3. Program Returns.** Bank will receive R17 Return Entries on behalf of Company in accordance with the Program Rules. Company understands and agrees that Bank is otherwise permitted to dishonor R17 Return Entries in accordance with the ACH Rules, and that it is Company's responsibility to notify Bank of Program Entries that should be dishonored, in accordance with the time limits set forth in the ACH Rules. Company understands and agrees that all Program Returns (as defined in the Program Rules) may be transmitted for up to 60 days following the Settlement Date of the original Entry. If a Participating RDFI wishes to transmit a Program Return after 60 days from the Settlement Date of the original Entry, the Participating RDFI must contact Bank to obtain permission for a late Program Return and Bank shall accept or deny the late Program Return request at its sole discretion. Company understands and agrees that it is the Participating RDFI's responsibility to provide Bank with the appropriate subcode specifying the nature of each Program Return.
- 4. Program Information.** In accordance with the requirements of the Program Rules, Company understands and agrees that Bank is permitted to share information with NACHA regarding Company's participation in the Program, including but not limited to transaction volumes.
- 5. Indemnification.** Bank shall have no liability for the acceptance of any Program Return in accordance with this Addendum and the ODFI Agreement. In addition, Company will indemnify Bank from and against all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered by Bank arising directly or indirectly from or related to its performance of the Program Services.
- 6. Termination.** In addition to the termination provisions contained in the Master Agreement and Service Description, Bank may terminate this Addendum immediately upon notice to Company if it receives notice of termination of the applicable ODFI Agreement.

USB
MMS



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102

Telephone No. (505) 766-6381

Contract Number: 30-341-13-09855

Contract Amendment No.: Three

Term: May 1, 2014 - April 30-2018

Ship to:
New Mexico Department of Finance and Administration
Bataan Memorial Building, Suite 181
Santa Fe, NM 87501

Procurement Specialist: Savannah Quintana

Telephone No.: (505) 827-0499

Invoice:
Same as "Ship To"

For questions regarding this Contract please contact:

Irene Sanchez (505) 827-4997

Title: **Fiscal Agent Bank Services**

This Contract Amendment is to be attached to the respective contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

See attached for details

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 12/19/2016

THIRD AMENDMENT TO THE FISCAL AGENT SERVICES AGREEMENT
BETWEEN THE STATE BOARD OF FINANCE OF THE STATE OF NEW MEXICO
AND WELLS FARGO BANK

THIS AMENDMENT (“Amendment”) is by and between the State Board of Finance of the State of New Mexico (the “Board”) and Wells Fargo Bank (the “Bank”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Fiscal Agent Banking Services Contract.

WHEREAS, the Board and the Bank entered into Fiscal Agent Banking Services Contract SPD #30-341-13-09855 dated effective May 1, 2014 (“the Agreement”) which will expire on April 30, 2018;

WHEREAS, under the terms of the Agreement, the Agreement may be amended by written instrument executed by the Board and the Bank;

WHEREAS, the Board and the Bank further wish to amend the Agreement to memorialize and incorporate into the Agreement certain activities in which the Board and the Bank currently are participating in;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereto hereby agree as follows:

1. Section 27 (Scope of Work), subsection L (Credit and Debit Card Services) is amended in part to read:

The Bank shall provide credit and/or debit card processing services, upon prior written approval of the director of the Board, to any Agency so requesting, subject to the terms and conditions set out in this subsection and those contained in the Merchant Services Operating Procedures as modified, attached hereto as Exhibit B. The Bank shall provide authorization services to those Agencies desiring to accept American Express cards, upon prior written approval of the director of the Board, as to the agreement between the State and American Express, as amended, attached hereto and incorporated as Exhibit F to this Agreement (the “Exhibit F Agreement”). The term of the Exhibit F Agreement shall run concurrently with the Agreement, which ends on April 30, 2018, subject to earlier termination pursuant to Section 7 of the Agreement or extension, upon mutual agreement of the State and American Express, pursuant to the Exhibit F Agreement, which provides that in no event may it extend beyond December 1, 2020.

Except as specifically amended by this Amendment, all terms and conditions of the Fiscal Agreement, including Contract Amendment Nos. One and Two thereto, shall remain unchanged and in full force and effect. This Amendment will become effective on December 1, 2016 or upon approval of the State Purchasing Agent, which is later (“Effective Date”).

IN WITNESS WHEREOF, the parties have caused their respective representatives to execute this Amendment as of the Effective Date.

STATE OF NEW MEXICO
STATE BOARD OF FINANCE



Susana Martinez, Governor and President of
the State Board of Finance

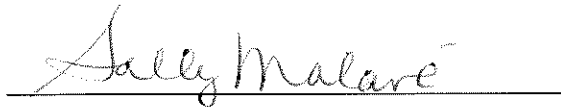
WELLS FARGO BANK



(Name, Title)
MARK A. JENSEN, SENIOR VICE PRESIDENT

11/15/16
(Date)

Board Counsel - Certifying Legal Sufficiency:



11/16/2016
(Date)

THIS AMENDMENT has been approved by the General Services Department, State Purchasing
Division.

NEW MEXICO GENERAL SERVICES DEPARTMENT




State Purchasing Agent

12/16/16
(Date)

The records of the State of New Mexico Department of Taxation and Revenue ("TRD") reflect
that the Bank is registered with TRD to pay gross receipts and compensation taxes.

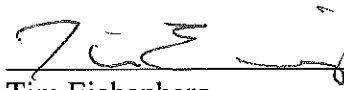
NEW MEXICO TAXATION AND REVENUE
DEPARTMENT
Contractor ID No. 02-313359-00-7



01/15/16
(Date)

THE FOLLOWING, while not a party to the Fiscal Services Agreement, has reviewed this Amendment and found it acceptable.

STATE TREASURER



Tim Eichenberg
11/15/16
(Date)



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102

Telephone No. (505) 766-6381

Contract Number: 30-341-13-09855

Contract Amendment No.: Two

Term: May 1, 2014 - April 30, 2018

Ship to:
New Mexico Department of Finance and Administration
Bataan Memorial Building, Suite 181
Santa Fe, NM 87501

Invoice:
Same as "Ship To"

For questions regarding this Contract please contact:

Irene Sanchez (505) 827-4997

Procurement Specialist: Savannah Quintana

Telephone No.: (505) 827-0499

Title: Fiscal Agent Bank Services

This Contract Amendment is to be attached to the respective contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

**In accordance with Contract provisions, and by mutual agreement of all parties, this Contract is extended from May 1, 2016 to April 30, 2018 at the same price, terms and conditions.
See attached for details**

In addition, Contract Amendment number Two rescinds Contract Amendment number One changing the Contract Number from 40-000-14-00061 to 30-341-13-09855.

Contract Number 40-000-14-00061 will remain in SHARE.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 3/4/2015

AMENDMENT TO THE FISCAL AGENT SERVICES AGREEMENT
BETWEEN THE STATE BOARD OF FINANCE OF THE STATE OF NEW MEXICO
AND WELLS FARGO BANK

THIS AMENDMENT ("Amendment") is by and between the State Board of Finance of the State of New Mexico (the "Board") and Wells Fargo Bank (the "Bank"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Fiscal Agent Banking Services Contract.

WHEREAS, the Board and the Bank entered into Fiscal Agent Banking Services Contract SPD #30-341-13-09855 dated effective May 1, 2014 ("the Agreement") which will expire on April 30, 2016;

WHEREAS, under the terms of the Agreement, the Board has three (3) two-year options to extend the duration of the Agreement upon the same terms and conditions set forth in the Agreement;

WHEREAS, under the terms of the Agreement, the Agreement may be amended by written instrument executed by the Board and the Bank;

WHEREAS, the Board wishes to exercise its option to extend the duration of the Agreement for two years, expiring on April 30, 2018 ("First Renewal");

WHEREAS, the Board and the Bank further wish to amend the Agreement to memorialize and incorporate into the Agreement certain activities in which the Board and the Bank currently are participating in;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereto hereby agree as follows:

1. Section 6 of the Agreement (Term) is amended as follows:

This Agreement shall not become effective until approved in writing by Board Counsel and the State Purchasing Agent. Subject to such approval, the term shall begin on May 1, 2014 and shall terminate on April 30, 2018, unless earlier terminated pursuant to the terms of Section 7 or further extended pursuant to the terms of Section 8.

2. Section 27 of the Agreement (Scope of Work) is amended to add the following new subsection:

T. Periodic Meetings

The Board and the Bank shall provide for periodic meetings between the Bank and the State to discuss matters related to the services provided under this Agreement. State participants shall include representatives of the Board, State Treasurer's Office (STO),

and Department of Finance and Administration (DFA). The Bank shall make available representatives as needed or required to discuss matters identified by the State. The time, location and frequency of these meetings shall be as mutually agreed upon by the parties.

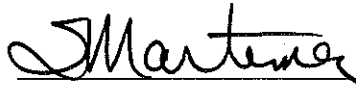
3. Section 27 (Scope of Work), subsection L (Credit and Debit Card Services) shall be amended in part to read:

The Bank shall provide credit and/or debit card processing, upon prior written approval of the director of the Board, to any Agency so requesting, subject to the terms and conditions set out in this subsection and those contained in the Merchant Services Operating Procedures as modified, attached hereto as Exhibit B. The Bank shall provide authorization services to those Agencies desiring to accept American Express cards, upon prior written approval of the director of the Board, as to the agreement between the State and American Express, as amended, attached hereto and incorporated as Exhibit F to this Agreement (the "Exhibit F Agreement"). The term of the Exhibit F Agreement shall run until December 1, 2016, subject to earlier termination pursuant to Section 7 of the Agreement.

Except as specifically amended by this Amendment, all terms and conditions of the Fiscal Agreement shall remain unchanged and in full force and effect. This Amendment will become effective on May 1, 2016 or upon approval of the State Purchasing Agent, which is later ("Effective Date").


IN WITNESS WHEREOF, the parties have caused their respective representatives to execute this Amendment as of the Effective Date.

STATE OF NEW MEXICO
STATE BOARD OF FINANCE



Susana Martínez, Governor and President of
the State Board of Finance

WELLS FARGO BANK



(Name, Title) SENIOR VICE PRESIDENT

Board Counsel - Certifying Legal Sufficiency:

Sally Malave

THIS AMENDMENT has been approved by the General Services Department, State Purchasing Division.

NEW MEXICO GENERAL SERVICES DEPARTMENT

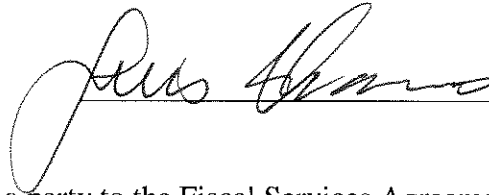


State Purchasing Agent

The records of the State of New Mexico Department of Taxation and Revenue ("TRD") reflect that the Bank is registered with TRD to pay gross receipts and compensation taxes.

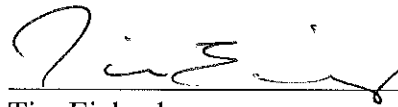
NEW MEXICO TAXATION AND REVENUE
DEPARTMENT

Contractor ID No. 02-313359-00-7



THE FOLLOWING, while not a party to the Fiscal Services Agreement, has reviewed this Amendment and found it acceptable.

STATE TREASURER



Tim Eichenberg



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102

Telephone No.: (505) 766-6381

Price Agreement Number: 40-000-14-00061

Price Agreement Amendment No.: One

Term: May 1, 2014 thru April 30, 2016

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Vanessa LeBlanc

Telephone No.: (505) 827-0629

Invoice:
As Requested

Title: Fiscal Agent Bank Services

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately:

**Please change the Price Agreement number from: 30-341-13-09855
to: 40-000-14-00061**

Also, please refer to RFP page 4, section 1, paragraph 3 which allows all other entities to utilize the Price Agreement:

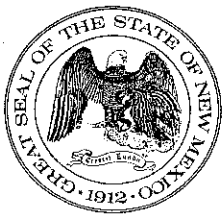
“All departments, agencies, branches, boards and others designated by the Agency are included in the term “State Government” when services for agencies are referred to in this RFP. This procurement of fiscal agent banking services shall be governed by the New Mexico Procurement Code and the requirements set forth in this RFP.”

The provisions of the Price Agreement shall remain in full force and effect, except as modified by this amendment.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 2/21/2014



State of New Mexico General Services Department

Contract

Awarded Vendor

0000045831
Wells Fargo
200 Lomas Blvd. NW
Albuquerque, NM 87102

Telephone No. 505-766-6381

Contract Number: 30-341-13-09855

Payment Terms: See Contract

F.O.B.: See Contract

Delivery: See Contract

Ship To:

New Mexico Department of Finance and Administration
Bataan Memorial Building, Suite 181
Santa Fe, NM 87501

Procurement Specialist: Eric Sanchez *ES*

Telephone No.: 505-827-0554

Invoice:

Same as "Ship To"

For questions regarding this contract please contact:
Jeff Primm 505-827-3936

Title: **Fiscal Agent Bank Services**

Term: **May 1, 2014 thru April 30, 2016**

This Contract is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Contract.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 12/2/2013



STATE OF NEW MEXICO
State Board of Finance

FISCAL AGENT BANKING SERVICES

CONTRACT

May 1, 2014

Contract #: 30-341-13-09855

RECEIVED
SUN 10/17/06

200 OCT 17 AM 8:37

38.	Average Daily Balance for Uncollected Deposits	33
39.	Assumption of Obligations and Related Costs	33
40.	Costs of Transfer to Successor Fiscal Agent	33
41.	Continuing Obligation	34
42.	New Mexico Employees Health Coverage	34
43.	HIPAA Compliance.....	34

EXHIBIT A

FIELD OFFICES AND REMOTE LOCATIONS

EXHIBIT B

MERCHANT SERVICES AGREEMENT

EXHIBIT C

BANK'S FEE SCHEDULE

EXHIBIT D

BANK'S AVAILABILITY SCHEDULE

EXHIBIT E

**COMMERCIAL ACCOUNT AGREEMENT, MASTER TREASURY MANAGEMENT AGREEMENT,
AND SERVICE DESCRIPTIONS**

EXHIBIT F

AMERICAN EXPRESS CARD ACCEPTANCE AGREEMENT

EXHIBIT G

PAYMENT GATEWAY USER AGREEMENT

SPD #30-341-13-09855

THIS AGREEMENT is made and entered into effective May 1, 2014, by and between the Board of Finance of the State of New Mexico ("Board") and Wells Fargo Bank ("Bank"), to define the terms and conditions of the designation by the Board of the Bank as Fiscal Agent for the State of New Mexico.

WHEREAS, the Board is authorized by Section 6-10-35 NMSA 1978, and by procedures adopted by the Board under such statute to designate a bank doing business in the State of New Mexico and having unimpaired Tier 1 Core Capital as defined in federal Risk-Based Capital Guidelines, 12 CFR Part 3 and 12 CFR Part 325, of at least twenty million dollars (\$20,000,000) to act as the Fiscal Agent of the State of New Mexico; and

WHEREAS, the Bank represents that it qualifies under the terms of such statute and procedures to be so designated, and has submitted its proposal for service as fiscal agent for the term set forth herein upon all of the terms and conditions and providing services which follow:

WHEREAS, the Bank does hereby accept its designation as Fiscal Agent for the State of New Mexico as set forth in this Agreement;

NOW THEREFORE, the Board does hereby designate the Bank to serve as Fiscal Agent for the State of New Mexico for the period from May 1, 2014 through April 30, 2016, at the discretion of the Board, under the following terms and conditions:

GENERAL TERMS AND CONDITIONS

1. Scope of Agreement; this Agreement controlling; modifications to Exhibits

- A. This Agreement, including all of its Exhibits, incorporates all agreements, covenants, and understandings between the Bank and the Board concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement; provided, however, that those matters specifically designated herein as procedural can be as agreed to by the contract administrators without the necessity of direct embodiment within this written Agreement.
- B. Further, in the event that there is any conflict between this Agreement and other documents attached hereto and incorporated herein by reference as Exhibits B, E and G, the provisions of this Agreement shall control. Moreover, the parties agree that any provisions contained in the Exhibit B, E and G agreements and the documents purporting to require indemnification of the Bank by the Board or the State, arbitration of any dispute between the parties, grant of security interest by the Board or the State, or waiver and release of claims by the Board or the State shall not be applicable or enforceable; whether or not those provisions have been stricken out in those exhibits. Additionally, this Agreement shall be considered part of the "Service Documentation" as that term is used in the Master Agreement for Treasury Management Services, which is one of the agreements contained in Exhibit E, or in any other document attached as part of Exhibit B or E, and shall govern in the event of any conflict between it and any such documentation. Any provision or portion of a provision that is struck out in any of the Exhibit B and E agreements and documentation shall not be applicable or enforceable.

2. Amendments

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the Bank and the Board. No amendment shall become effective until approved by the Bank, the SBOF, Office of

the Attorney General's Office as Board Counsel, and the State Purchasing Agent. If additions or changes in services are requested by the State, the Bank shall present a cost analysis and proposal for the Board's review and approval. No payment for such added or changed services shall be made until an amendment has become effective.

3. Definitions

As used in this Agreement:

- A. "Agency" means each department, agency, branch, commission, board, instrumentality, and institution of government of the State of New Mexico.
- B. "ACH" means the Automated Clearing House.
- C. "Appropriate State Official(s)" means, but is not limited to, the State Board of Finance, the contract administrator for this Agreement designated by the Board, the State Treasurer, the State Auditor, the Financial Institutions Division of the Regulation and Licensing Department, the Office of the Attorney General, the Department of Finance and Administration, and their representatives.
- D. "Business Days" means Monday through Friday excluding state holidays and bank holidays.
- E. "Collected Balance(s)" means ledger balance, less uncollected deposited items.
- F. "Compensating Balance" means a balance on which no interest is paid to the account holder and any earnings are retained by the Bank as compensation for services under the Agreement.
- H. "Investing Agencies" means the State Investment Council (SIC), the Public Employees Retirement Association (PERA), the Educational Retirement Board (ERB), and the State Treasurer's Office (STO).
- I. "Merchant Window" means a teller window specifically designated to process merchant transactions, which includes those of the State and its Agencies.
- J. "Opening Available Balance" means prior day collected balance plus previous day one day float.
- K. "Special Correspondent Bank" means any bank other than the Bank that provides services for the benefit of the State as required under this Agreement.
- L. "State" means the departments, agencies, branches, commissions, boards, instrumentalities and institutions of government of the State of New Mexico.
- M. "State Account" or "State Accounts" means all deposit accounts at the Bank of the State Treasurer and of other State departments, agencies, branches, commissions, boards and instrumentalities and institutions of the State maintained pursuant to this Agreement, but excluding accounts of State departments, agencies, branches, commissions, boards and instrumentalities and institutions of the State that are established pursuant to a separate agreement, and excluding trust accounts containing non-state funds and time deposits bearing the interest rate established by the Board for the deposit of public funds, pursuant to Sections 6-10-30 and 6-10-36 NMSA 1978. Upon written request by the State Treasurer, State Accounts shall include the Local Government Investment Pool. All deposit accounts established hereunder shall be specifically identified as "State of New Mexico - Fiscal Agent Account".
- N. "Treasurer" means the Treasurer of the State of New Mexico.

4. Assignment or Transfer

The Bank shall not assign or transfer any interest in this Agreement or assign any claims for compensation due under this Agreement without prior written approval of the Board.

5. Statutory Requirements

The Bank shall ensure compliance with Section 6-10-35 NMSA 1978, as well as other applicable laws of the State of New Mexico.

6. Term

This Agreement shall not become effective until approved in writing by the Attorney General's Office as Board Counsel, and the State Purchasing Agent. Subject to such approval, the term shall begin on May 1, 2014 and shall terminate April 30, 2016, unless earlier terminated pursuant to the terms of Section 7 or extended pursuant to the terms of Section 8.

7. Termination

The termination rights of the Bank and the Board under this Agreement shall be as follows:

A. The State, upon Board approval, may terminate without cause any or all services provided for in this Agreement upon giving at least thirty (30) days' written notice to the Bank. The Bank may terminate this Agreement without cause by giving at least three (3) months' written notice to the State. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

B. In addition, the Bank and the Board agree that the Board shall have cause to terminate this Agreement in the event that the Bank shall have failed to perform its contractual duties hereunder or in the event that continued performance by the Bank would jeopardize the security of State funds under the management, possession or control of the Bank; provided, however, the Bank shall be given at least thirty (30) days' prior written notice of the Board's intention to terminate this Agreement. The Bank shall have a reasonable opportunity to appear before the Board to present its position concerning such termination. The Bank and the Board further agree that the Board's determination regarding the potential jeopardy of State funds shall be final and shall be binding upon both the Board and the Bank. Further, the Bank may terminate this Agreement for cause upon at least thirty (30) days' prior written notice to the Board.

C. Further, the terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the Board's performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the Board to the Bank. The Board's decision as to whether sufficient appropriations are available shall be accepted by the Bank and shall be final. Notice under this subsection shall be effective upon receipt, or any later date set out in that notice, and is not subject to the notice provisions set forth in subsections A and B above.

D. This section is not exclusive and does not waive other legal rights and remedies afforded a party in such circumstances as the other party's default/breach of contract. However, any financial obligation that may be incurred by the Board under the terms and conditions of any of the agreements and documents attached hereto as exhibits is subject to the limitations set forth in subsection C of this section.

8. Options to Extend

At the expiration of the initial two-year term of this agreement, the Board shall have three (3) two-year options to extend the duration of the Agreement upon the same terms and conditions set forth herein representing a total potential extension period of up to six (6) years. In no event shall this agreement extend beyond eight (8) years.

9. Status of Contractor

The Bank and its directors, officers, employees and agents are independent contractors performing professional services for the Board and are not employees of the State of New Mexico. The Bank and its directors, officers, employees and agents of the Bank shall not accrue leave, retirement, insurance, bonding, use of State vehicles or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Bank acknowledges that all sums received hereunder are reportable by the Bank for income tax purposes as self-employment or business income, and are reportable for self-employment tax.

10. Conflict of Interest

The Bank warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Bank certifies that during the term of the Agreement the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978 (as amended) and the Gift Act, Sections 10-16B-1 through 10-16B-4 NMSA 1978 have been followed.

11. Contract Administrators

The Bank and the Board shall each designate in writing a contract administrator who shall have the authority to ensure that the terms of this Agreement are observed and that services are timely provided.

12. Records and Audits

The Bank agrees to maintain those records and reports required by this Agreement, and the Appropriate State Officials shall have the right to inspect, copy and audit at any time during the Bank's normal business hours such records and reports and other such records of the Bank as may relate to the performance of the services as provided under this Agreement, unless otherwise prohibited by law. Payment by the State of any amount of compensation due under this Agreement shall not foreclose the right of the State to audit billings for such amounts nor foreclose the right of the State to recover excessive or illegal payments.

The books and records of the Bank relating to the performance of services under this Agreement shall be maintained for a period of at least three (3) years from the date of the final payment under this Agreement unless a shorter period is otherwise authorized in writing by the Board and the Bank. Notwithstanding the foregoing, records relating to financial transactions shall be maintained on a rolling, seven year basis from the date of such transaction.

13. Visitation

The Bank agrees that the Appropriate State Officials may visit the Bank at any reasonable time and manner, after appropriate notice to observe and inspect operations of the Bank in providing service under this Agreement, unless otherwise prohibited by law.

14. Cooperation with Audits

The Bank agrees to cooperate with and make space available for auditors when audits are made of any Agency for which services are being provided under this Agreement.

15. Unimpaired Capital Requirement

The Bank shall have and shall maintain during the term of this Agreement, and any amendment or renewal thereof, an unimpaired Tier 1 Core Capital as defined in federal Risk-Based Capital Guidelines, 12 CFR Part 3 and 12 CFR Part 325, of at least twenty million dollars (\$20,000,000).

16. Pledge of Security

The Bank shall furnish to the Board with this Agreement and shall maintain at an approved custodial financial institution throughout the term of this Agreement securities in the amount and kind specified by Sections 6-10-35D, 6-10-16, and 6-10-17 NMSA 1978, and approved by the Board as security for the safekeeping of money of the State of New Mexico and the faithful performance of its duties as the Fiscal Agent. The amount of securities shall be (1) twenty-five million dollars (\$25,000,000), or (2) the amount of collateral as required by the risk assessment program conducted by the Treasurer to comply with the Board's collateral policy, whichever is greater. The Board may, by resolution, adjust these security requirements as it deems necessary to protect the interest of the State.

17. Approval of Pledge

The Bank warrants that by approving this Agreement the Bank's board of directors or the loan committee of the Bank also approves the pledging of the Bank's assets as security for State's deposits, which approval shall be reflected in the minutes of the board or loan committee of the Bank, and further warrants that any additional agreement between the Board and the Bank and any amendments thereto, and any pledge of securities as collateral for deposit of State funds contained therein, shall be continuously maintained as official records of the Bank.

18. Verification of Pledged Securities

In compliance with the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 and any other applicable law, the Bank shall, at its own expense, cause all such assets of the Bank pledged as collateral for State Accounts to be verified at the end of the Bank's fiscal year in an audit conducted by an independent certified public accountant or an internal auditor or senior officer of the Bank covered by a blanket bond in an amount acceptable to the State Treasurer. The audit shall include an examination of the records and files of the Bank for the collateral and shall certify within ninety (90) days after the end of the Bank's fiscal year whether minutes of the Bank's board of directors or loan committee reflect approval of the pledge of collateral to secure State Accounts, whether the pledge of security was continuously maintained as an official record of the Bank and whether the collateral meets requirements of the Board's collateral policy and complies with the Bank's Depository Agreement with the State.

19. Bond Requirement

During the period of this Agreement, the Bank shall furnish and maintain, at the Bank's expense, throughout the term of this Agreement a bankers' blanket bond per occurrence coverage in a minimum amount of ten million dollars (\$10,000,000.00) containing terms and conditions reasonably acceptable to the Board. A certificate of the bond coverage shall be submitted to the Board at the time this Agreement is executed and each time coverage is renewed.

20. Indemnification

The Bank agrees to wholly indemnify the State for any and all loss, damage, cost, damages, expenses (including, without limitation, legal fees and expenses) and liability to the State (collectively hereinafter "Loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect (collectively hereinafter "Actions or Omissions") by the Bank, and its employees, officers, agents and directors in performing their duties hereunder. It is also acknowledged and agreed by the Bank that any Loss to the State shall, unless such Loss can be demonstrated by the Bank to have been due to a cause or causes beyond the reasonable control of the Bank (such as Acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the Bank could not have prevented the damage or Loss resulting from any such event), be presumed to be the result of

Actions or Omissions on the part of the Bank. Notwithstanding the foregoing, the Bank will not be liable for any Loss to the extent such Loss results from the Acts or Omission of the State or its agents.

The State waives and relinquishes any and all claims the State may have at any time and from time to time against the Bank (1) on account of the Bank refusing payment of the item in accordance with any stop-payment order; and (2) for payment of an item presented on the same Business Day that the stop-payment order on that item is received by the Bank and before the Bank has had a reasonable time to record the stop-payment order on its records, or where exact information regarding the amount and number of the item is not provided.

The State shall not be entitled to indemnification from the Bank for any Loss to the State resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect by the Human Services Department or by the Department of Workforce Solutions in performing its obligations related to reloadable debit card services except when the Bank has actively participated with the Agency in such actions or omissions and then only to the extent of that participation; however, any liability of the Bank to an Enrollee under the terms and conditions of the Deposit Agreement is solely that of the Bank, and not that of the State. Any liability of the Agency to an Enrollee related to the accurate disbursement of funds to the Deposit Account are solely that of the Agency, and not that of the Bank, and the State is not entitled to indemnification for any Loss resulting from such activity by the Agency.

The State shall not be entitled to indemnification from the Bank for any Loss to the State resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect by American Express in performing its duties related to acceptance of American Express cards by State agencies pursuant to a valid, current agreement between the State and American Express that has been made part of this Agreement, except when the Bank has actively participated with American Express in such actions or omissions and then only to the extent of that participation.

21. Product or Services

All computer programs developed by the Bank exclusively for the administration of this Agreement, or in providing sole user services under this Agreement, shall belong to and at the termination of this Agreement shall be delivered to the State. All transmissions or communication must be compatible with the State's network infrastructure, and the Statewide Human Resources, Accounting, and Management (SHARE) system. The Bank shall ensure compatibility with the network infrastructure and agency systems of State Agencies. Qualifications for Automated Clearing House (ACH) transactions and CD-ROM services include compliance with international ACH transactions (IAT), national standards for Originating Financial Institutions (OFI), Receiving – Financial Institutions (RFI), and ANSI X12 standards.

22. Taxes and Assessments

The Bank shall be solely responsible for the payment of all taxes and assessments of any kind for which the Bank may become liable by virtue of the performance of the services as specified in this Agreement, except as otherwise provided in this Agreement.

23. Failure to Perform

The Bank's failure to perform any of the services or requirements of this Agreement shall result in a loss of compensation to the Bank. The amount of such loss and the manner and time of the State's allocation of such loss shall be determined by the contract administrators and shall be binding on the parties, but subject to any legal action which the parties may thereafter take. If the Bank is delayed in or prevented from performing any service or requirement of this Agreement by reason of war, strike, terrorism, national emergency, any rule, order or regulation of any government authority, mechanical or electronic malfunctions, "acts of God" (including without limitation, fire, storm, flood or earthquake) or other similar extraordinary causes not within the control of the Bank, to the extent all reasonable precautions could not have prevented the failure to perform, and if prompt notice of the delay and its cause is given to the Contract Administrator and the Treasurer or any other Agency that is affected by such delay, the time for performance of such service or requirement of this Agreement

shall be extended by the period of time during which the cause of the delay shall continue, and no loss of compensation to the Bank shall result if the Bank performs with reasonable promptness after the delay.

24. Settlement Date Accounting System

The Bank shall utilize an actual settlement date accounting system for securities settlement in the performance of services under this Agreement.

25. Procurement Code Notice

This Agreement is governed by the laws of the State of New Mexico which prohibit bribes, gratuities and kick-backs in connection with the sale or purchase of anything of value by or for the State and which impose criminal and/or civil penalties against public officers or public employees and against sellers, contractors or their agents for engaging in any such activity or activity that violates the Procurement Code, Section 13-1-28 through 13-1-199, NMSA 1978.

26. Campaign Contribution Disclosure Form

Offeror shall complete, sign and include the Campaign Contribution Disclosure Form, an appendix to the RFP, with their proposal. This requirement applies regardless whether or not an applicable contribution has been made.

27. Scope of Work

The Bank shall provide the State with the following specified services:

A. Depository Services:

- 1.) The Bank shall accept all items delivered to it for deposit to the State Account(s).
 - a. All items shall be credited to the State Account(s) in a collected status equal to or better than the schedule of credit availability of the Federal Reserve Bank of Kansas City, Denver branch, as indicated by the most current operating circular.
 - b. If the Bank can credit the State Account(s) by reason of direct sends or courier trips for obtaining credit availability earlier than the Federal Reserve Bank schedule, then the Bank shall credit the State's account(s) at such time. The Bank agrees to work with the State and its Agencies to determine, on an on-going basis, the best delivery scheduling possible to minimize float.
- 2.) The Bank will accept unqualified deposits (deposits lacking MICR encoding) and qualified deposits (encoded items).
- 3.) The Bank shall provide separate cutoff times for the receipt of qualified and unqualified deposits. The Bank shall provide to the Treasurer a daily analysis of deposits not meeting the aforementioned cutoff times for each Business Day.
- 4.) The Bank shall provide capability for deposits to be made through lockbox depository services as requested by an Agency or the Treasurer.
- 5.) The Bank shall automatically re-clear all non-sufficient funds (NSF) items a second time, except when instructed otherwise in regard to specific circumstances as approved by the Board. When redeposit is not possible or when an NSF item is returned a second time, the Bank shall charge the appropriate State Account(s).

- 6.) The Bank shall credit the State Account(s) with the amounts shown on deposit tickets and make separate adjusting entries if the deposited items vary. The Bank shall disclose to the Treasurer in writing any overage and shortage, to include identification of the adjustment. Such identification shall, at a minimum, reflect: the type and amount of the adjustment; the reason for the adjustment; the total amount of the original deposit being adjusted; the date the adjustment is being posted to the State Account; and the specific name of the Agency that made the original deposit. The Bank shall assist in the resolution of all encoding errors.
- 7.) The Bank shall continue to provide Merchant Windows at all locations where they currently exist, and shall make reasonable efforts to provide a Merchant Window at each of its additional branches that receives State deposits to accommodate the volume of state deposits allowing for greater accuracy and streamlined processing.
- 8.) The Bank shall provide a responsive contact person at the Bank's main office as well as at each branch for daily depository questions and concerns of the State.
- 9.) The Bank shall allow for deposit services for weekend, holiday and/or after hours deposits.
- 10.) The Bank shall provide the option of Electronic Deposit Services to allow for the electronic clearing of checks using point of sale devices, pursuant to the product description in Exhibit E. Such capability will include: scanning equipment the State can purchase that will scan the front of the check; ability to send check images to the Bank electronically from a point of sale device; ability to receive electronic information from the Bank indicating NSF checks within three (3) business days; and ability to audit that all checks have been properly received and posted.

B. Cash Management

- 1.) The Bank shall provide the following minimum information each Business Day to the State Agencies having State Accounts by hard copy or soft copy through computer terminals having the ability to obtain in a secure manner and capture in printed form the following information:
 - a. Prior day balances in each account, including the ledger balance, debits and credits to the account, the Collected Balance and the Available Balance;
 - b. Information on check deposit float for 0, 1, 2, 3, and more days on the basis of each day that the Bank is open prior to 9:00 a.m. of the following Business Day;
 - c. Reconciliation reports by account detailing warrants redeemed and warrants outstanding;
 - d. A report showing total dollars and total items deposited each day;
 - e. A confirmation of all wire and ACH transactions showing time received and sent by the Bank and any addendum information;
 - f. A report to the Board and Treasurer showing average daily Collected Balance for the month to date.
- 2.) The Bank, on an ongoing basis, shall review State cash management and other related financial operations and make such recommendations to the Treasurer and Board as it believes may improve the efficiency and effectiveness of these operations.

3.) The Bank shall support the State in complying with the federal Cash Management Improvement Act of 1990 (CMLIA 90) and shall provide the Treasurer, as the responsible State official, with the information and services the State requires to effect and maintain such compliance. If so requested by the Treasurer, the Bank shall provide warrant clearance pattern information on all accounts in a format acceptable to the Treasurer and containing the data elements specified by the Treasurer.

4.) The Bank shall provide in-state administration and support for Cash Management services.

5.) The Bank shall provide such additional information and services as the Bank and Treasurer shall agree. If services are requested pursuant to this section, the Treasurer and the Bank and the Board shall agree on such additional services and the fees therefore, and this Agreement shall be amended pursuant to Section 2, to provide for such additional services and fees.

C. Lockbox Services

Lockbox Services shall be provided to the State at the request of an Agency or the Treasurer, as provided in this subsection.

1.) Mail Collections - The Bank shall collect each day the Bank is open for business or as the U.S. Post Office permits, the contents of the State's post office boxes at 6:00 a.m., 7:00 a.m., and 10:00 a.m. or as required by State operations.

2.) Remittance Processing - The envelopes picked up from the post office box will be opened and the contents removed. The checks contained in the envelope will be inspected and handled in the following manner:

a. The Bank accepts for deposit into the appropriate State Account(s) the checks, drafts and other items made payable to the State or a reasonable variation thereof.

b. With respect to the Child Support Enforcement Division (CSED), which maintains two (2) lockboxes in Albuquerque, New Mexico (one (1) for interstate payments and one (1) for non-interstate payments), the Bank will scan all payment instruments (checks and money orders) and associated supporting documents, including envelopes, delivered to each lockbox. The Bank shall deliver the images electronically to the Human Services Department (HSD), State Disbursement Unit (SDU). CSED deposits will be completed within a twenty-four (24) hour window, from the time of pick up at the Albuquerque, New Mexico post office to delivery of the images to the SDU. The Bank shall forward all exception items to the SDU.

3.) Deposits - In order to maximize daily receipts and funds availability, the Bank shall make one or more deposits each Business Day to be credited to the appropriate State Account at the Bank. The Bank will supply an advice of each deposit made to the appropriate Agency. For CSED lockbox services, advices shall be provided to SDU electronically.

4.) Lockbox Imaging – When the State requires a lockbox with imaging services, the Bank will copy images to CD-ROM or other electronic storage format agreed upon by the Bank and the State of deposited checks and remittance coupons in processing and will forward two (2) copies of the CD-ROM to the appropriate Agencies in accordance with state guidelines.

5.) Check Endorsement - The Bank endorsement will meet Regulation CC requirements. The following endorsement will be applied to each check deposited:

"Credited to the account of the within named payee. (NAME OF BANK)."

- 6.) Exception Items - Exception items are defined as:
 - a. Checks which are not negotiable as drawn or which are not to be processed due to special instructions provided by the Treasurer or State Agency.
 - b. Envelopes containing only customer correspondence.
 - c. With respect to CSED, all exception items will be delivered to SDU in hardcopy in an economical and timely manner agreed upon by CSED.
- 7.) Materials Disposition - Remittance papers, envelopes, exception items, balancing tapes, and deposit ticket copies will be batched by deposit, and returned to the proper Agency. The Bank shall also transmit to proper Agency in an acceptable format imaging documents and shall maintain accessibility electronically.
- 8.) Returned Checks - In the event that a check deposited to a lockbox of a State Account is returned for any reason, the Bank will attempt to redeposit it twice, and if the item is returned a third time the Bank shall charge the appropriate account as established in Section 27, Paragraph A(5).
- 9.) Miscellaneous Expenses - Any expense, such as post office box or lockbox rental, postage due, or safety deposit box for Certificates of Deposit and Surety Bonds administered by the Treasurer will be disbursed by the Bank. The Bank shall post the charge to the State's account analysis statement.
- 10.) Remittance Received at State Offices - Remittances sent directly to an Agency office can be deposited at any branch of the Bank. The Agency may also redirect remittances to the designated post office box number by mail, or to the Remittance Processing area of the Bank by courier or electronically.
- 11.) Additional Lockbox Services - Updating the state receivable records shall be accomplished (1) either by data transmission, computer-to-computer, or magnetic tape, and/or (2) by paper. Hard copy paper reports shall be provided in an agreed upon format.

D. Warrant Services

The Treasurer maintains disbursement accounts, including but not limited to the State of New Mexico Warrant Accounts, against which all series of State warrants currently in circulation are to be charged. All warrants shall be treated as cash items and immediate credit is to be given to any individual or bank upon presentation to the Bank. Pursuant to state law, including Section 6-4-6, NMSA 1978, as amended, the cash items shall be debited to the State of New Mexico Warrant Account and redeemed upon presentation of the warrants to the State.

- 1.) The Bank shall cancel all warrants with proper paid date and imprint paid warrants with "Paid State Treasurer of New Mexico" to show the warrants have been paid by the Bank. Cancellation of warrants must be legible so that the cancellation date is visible on digital image.
- 2.) The Bank shall provide positive pay check fraud reduction services in a manner acceptable to the State Treasurer in accordance with the positive pay decision times established in Exhibit D.

- 3.) For any period of time during which a State Agency is not using the Image File Import Service described in Exhibit E, the provisions of this subsection shall apply. The Bank shall prepare one (1) original CD-ROM and three (3) copies or additional as requested of all cancelled warrants coded with an item sequence number. The Bank shall deliver two (2) CD-ROM copies to the State Treasurer's Office no later than two (2) weeks after presentation of warrants to the State Treasurer and shall deliver one (1) CD-ROM copy and one (1) text file of all cancelled warrants to the New Mexico Department of Workforce Solutions in Albuquerque, New Mexico. The Bank shall deliver the original CD-ROM to the State Records Center and Archives, on behalf of the State Treasurer, within twenty-four (24) hours of the presentation of the CD-ROM to the Bank. Warrants shall be imaged to ensure an accuracy level acceptable to the Treasurer and shall conform to New Mexico Microphotography Standards as approved by the State Records Center and Archives (1.14.2 NMAC). The Bank shall be capable of providing the daily redeemed warrant information on CD-ROM and via online access (warrant imaging) for up to seven (7) years and provide the necessary software/hardware and training to the Treasurer and other Agencies as required.
- 4.) Every ninety (90) days the Bank shall deliver all redeemed warrants, at the Bank's expense, to the State Records Center in Albuquerque, pursuant to instructions from the State Records Center located at 4320 Yale Boulevard NE, Suite A. In addition, the Bank shall deliver to the State Treasurer a daily report detailing warrants redeemed by warrant type indicating the account and the total amount of each warrant series.
- 5.) The Bank shall deliver to the Treasurer on each Business Day via online report redeemed warrants in numerical order to source including the item sequence number and totals by warrant source/number and count.
- 6.) The Bank shall deliver electronically within five (5) Business Days following each month to the Treasurer, each warrant issuing Agency, and DFA a file containing a list of outstanding warrants by series in numerical order as of that month's end, which file shall include each warrant's issue date, payee, and issued amount. The Treasurer and DFA shall receive the electronic report for all warrant series, but other warrant issuing Agencies shall receive electronic reports only for those warrant series that they issue.
- 7.) The Bank shall transmit, via electronic data transfer, to DFA all account activity information required by the Treasurer, which shall include a warrant paid file in Bank Administration Institute (BAI) format. The data shall be transmitted to DFA by 4:00 a.m. each Business Day, unless the Treasurer, issuing agency and the Bank agree in writing upon an alternative schedule. The Bank shall submit, via electronic data transfer, to the Department of Information Technology (DOIT) all warrant information required by the Treasurer, including a warrant paid file. The data shall be transmitted to DOIT by 8:00 a.m. each Business Day, unless the Treasurer, issuing agency and the Bank agree in writing upon an alternative schedule. The electronic data will be stored in Direct Access Storage Device (DASD) or an agreed upon format. For data sent to DFA, the file specifications shall conform to the requirements of the Statewide Human Resources, Accounting, and Management Reporting (SHARE) System and any supplemental or successor systems. The Bank shall provide the ability to provide more data sets upon request due to unanticipated circumstances.
- 8.) The Bank shall, at all times during the term of this agreement, maintain a ninety (90) day backup of the data transmitted daily to the Department of Information Technology's network infrastructure in magnetic tape or disk media format.

- 9.) The Bank shall, at its sole expense, replace any damaged or unreadable files or computer tapes within twenty-four (24) hours of notice being provided to the Bank, provided that the notice is given to the Bank within the ninety (90) day backup period.
- 10.) The Bank shall cancel any warrant issued by the State if it is unpaid for one year after it becomes payable. The Bank shall keep a register of all cancelled warrants that shows the number, date and amount of each warrant, and the date of cancellation.

E. Other Services

1.) Wire Transfer Services

a. The Bank shall provide money transfer services in compliance with all applicable federal and state laws and regulations in immediately available funds to or from various financial institutions for the credit of named payees. Wire transfers are to include all transfers deemed necessary by the Treasurer. All wire transfers shall be executed in a timely and customary manner that is reasonably expected in the banking industry.

b. The Bank shall receive and immediately credit the account of the Treasurer with incoming wire transfers. The Bank is to immediately notify, by telephone or terminal, the appropriate Agency and the Treasurer of incoming wires including information identifying the wire by source and type.

2.) Foreign Exchange Services and Money Processing Services

a. The Bank shall provide the following services at the daily foreign exchange rates as quoted by the Federal Reserve Bank of New York:

i. Exchange or convert foreign currency into U.S. currency for spot or future delivery;

ii. Exchange or convert U.S. currency into foreign currency for spot or future delivery;

b. The Bank shall receive and count cash delivered to the Bank;

c. The Bank shall provide coins or currency as necessary; and

d. The Bank shall issue cashier's checks, drafts or foreign payment orders as requested.

3.) Account Analysis

a. By the fifteenth (15th) calendar day of each month, the Bank shall provide to the Treasurer, or other State Agencies, and to the Board an account analysis for the preceding month showing activity for the preceding month in each category of services, the amount of earnings credit allowance, the amount of compensation due for the services, the average daily Collected Balance required to pay the Bank for the services, and the resulting excess or deficit position in compensating balances for each account maintained, as further described in Sections 36 through 38 of this Agreement. If the Bank for any reason cannot provide account analysis statements for the preceding month by the fifteenth (15th) calendar day of each month, the Bank shall provide to the Board a written explanation of the circumstances causing the

account analysis statement to be late, and proposed solutions to alleviate the delay in future months. The Bank may be required to appear before the State Board of Finance at a regularly scheduled meeting to discuss the cause and proposed solutions related to any such delay.

b. The Bank shall conduct its own periodic performance audits of State deposits processed via any operating lockbox as requested. The Bank shall provide the Board with a report on time periods between time of pickup at the lockbox and time of deposit to the Treasurer's account as determined by these audits.

c. All State Accounts maintained with the Bank pursuant to this Agreement and any collateral agreements entered into under this Agreement are usable in calculating compensation for analysis purposes.

d. An endpoint analysis report of checks deposited shall be provided by the Bank to the Board and the Treasurer upon request.

4.) Miscellaneous Services

a. The Bank shall provide for a representative to attend State Board of Finance meetings when possible.

b. The Bank shall provide specially designed checks and deposit tickets for the Treasurer and other Agencies as needed.

c. The Bank agrees to provide online access to the State's account to the State Treasurer and any other agency authorized by the Board. The Bank will provide the online capability for the Child Support Enforcement Division and the Taxation and Revenue Department's Motor Vehicle Division field offices reflecting daily deposit information, including deposit slip data, the amount of each transaction and the front and back of processed checks to facilitate daily deposit reconciliation.

d. The Bank agrees that it may be named as paying agent on any bond issue of the State. A separate agreement shall be entered into by the Bank or the Special Correspondent Bank for paying agent services.

e. The Bank shall provide a check collection service, including postage and insurance on items requiring special handling.

f. The Bank shall designate an in-state contract administrator per Section 11 and provide for in-state administrative and technical support for the State per this Agreement and in its capacity as the State's Fiscal Agent.

g. The Bank shall contract with one or more courier service providers (each a "Courier") to perform courier services as described herein. For purposes of this subsection, a Courier shall be an agent of the Bank, and shall not be an agent of the State. As part of its performance of these services, the Bank shall provide to the Treasurer and other State Agencies bags and trays ("Bank Bags") for the transport of cash and non-cash deposits. Courier services shall be provided every Business Day, and on bank holidays that the State does not observe ("Bank Holidays"). On Bank holidays, the Courier shall perform services pursuant to the schedule set forth herein and, if the Bank does not have deposit receiving facilities open, hold the deposits in a secure place until the earliest time they can be deposited with the Bank. The Courier shall be paid for the performance of the services herein described at an agreed upon rate for both the pick-up of Bank Bags at each location set forth herein

and their delivery to the Bank at either its Santa Fe Branch or Albuquerque location ("Shipment"), except for those services provided pursuant to subsection 27(E)(4)(g)(iii)(b) or as otherwise set forth herein. The Bank shall pay the Courier.

(i) Regular Daily Service Instructions: The Courier shall, except as set forth in subsection (ii), below, provide courier service according to the following schedule. This schedule can be modified only upon written notification by the Bank, approved in writing by the Treasurer's Office.

Between 7:00 am and 7:30 am: The Courier shall arrive at the State Treasurer's Office to deliver the Bank's document bag.

Between 11:00 am and 12:00 noon: The Courier shall arrive at the State Treasurer's Office to pick up transaction/document bag. The bag shall be delivered to the Bank in Albuquerque.

Between 11:00 am and 12:00 noon: The Courier shall arrive at the Administrative Building of the Museum of New Mexico, 725 Camino Lejo, Santa Fe, NM, for pick up of Bank Bags. The Bank Bag containing cash deposits shall be delivered to the Bank in Albuquerque.

Between 1:00 pm and 2:00 pm: The Courier shall arrive at the New Mexico Motor Vehicle Field Office, Valdes Industrial Park, 2544 Camino Edward Ortiz Suite B, Santa Fe, NM, for pick up of Bank Bags. The Bank Bag containing cash deposits shall be delivered to the Bank in Albuquerque.

Between 2:00 pm and 3:00 pm: The Courier shall arrive at the Department of Workforce Solutions Office, 401 Broadway NE, Albuquerque, NM, for pick up of Bank Bags. The Bank Bags shall be delivered to the Bank in Albuquerque.

Between 2:30 pm and 3:30 pm: The Courier shall arrive at the Taxation and Revenue Department, Joseph Montoya Building, 1100 St. Francis Drive, Santa Fe, NM, for two (2) pick ups of Bank Bags: one at Vehicle Services, Room 2132 and the other at Driver Services, Room 2093. The Courier shall retain all deposits for transport to the Bank. The Courier shall treat these pickups and deliveries as one (1) Shipment for purposes of charging.

Between 3:30 pm and 4:00 pm: The Courier shall arrive at the Taxation and Revenue Department, Manuel Lujan, Jr. Building, 1200 St. Francis Drive, Santa Fe, NM, for pick up of Bank Bags in the Control Room on the first floor. The Courier shall then make same day delivery of all Taxation and Revenue Department deposits and all other non-cash deposits collected during the day to the Bank. **All such deposits shall be delivered to the Bank by 7:00 pm.**

At 5:30 pm: The Courier shall arrive at all state-run Motor Vehicle Division field offices listed in Exhibit A for pick up of Bank Bags. The Courier shall then make same day delivery of all Motor Vehicle Division deposits to the Bank. **All such deposits shall be delivered to the Bank by 7:00 pm.**

(ii) Special Daily Service Instructions: For each of the days listed below, the Courier, **upon twenty-four (24) hours advance oral notice by the Treasurer's Office**, shall adhere to the schedule delineated in this subsection, or an alternate schedule upon twenty-four (24) hours advance oral notice by the Treasurer's Office.

(a) Applicable Days

Good Friday
June 30 or last Business Day in June
Santa Fe Fiesta Friday (Friday following Labor Day)
December 30 or last business day in December

(b) Special Schedule

10:30 am: The Courier shall arrive at the Administrative Building of the Museum of New Mexico, at the address noted in Exhibit A, for pick up of Bank Bags.

10:45 am: The Courier shall arrive at the Motor Vehicle Field Office, at the address noted in Exhibit A, for pick up of Bank Bags. It shall then deliver the cash deposits from the Museum and Motor Vehicles to the Santa Fe Branch.

11:00 to 12:00 noon: The Courier shall arrive at the Taxation and Revenue Department for the two pick ups of Bank Bags at the Joseph Montoya Building and the one pick up at the Manuel Lujan, Jr. Building, at the addresses noted in Exhibit A. The Courier shall then deliver all Taxation and Revenue Department deposits and the non-cash deposits from the Museum and Motor Vehicles to the Bank in Albuquerque for deposit by **3:00 pm**.

(iii) Additional Agency Same-Day Notice Pick-Up and Delivery Service

(a) Additional Agency Pick Ups and Deliveries: See Exhibit A.

(b) Special Weekly Pick Up and Delivery: The Courier shall, **upon receipt of oral instructions from the Agency**, approximately once per week pick up Bank Bags at the Public Regulation Commission, PERA Building, 4th Floor, Santa Fe, NM, and deliver the Bank Bags to the Bank in Albuquerque. For services performed pursuant to this subparagraph, Bank Bags shall be provided by the Bank.

(iv) Change of Address/Additional Pick-up Sites: The Treasurer or Agency shall notify the Bank in writing of any change of address at least ten (10) days in advance. The Treasurer's Office may add, with same day notice, other sites within the Santa Fe corporate limits for special pick up and delivery within Santa Fe or to the Bank in Albuquerque.

(v) Timely Service; Responsibility for Lost Interest; Limitation on Amounts Transported: Time is of the essence in performing deposit pick-up and delivery services. The Bank shall be responsible for any interest income lost to the State for failure to pick up deposits or failure to deliver

deposits pursuant to the instructions set forth in this document. However, in no case shall the Courier transport deposits exceeding the amount for which the Courier is bonded. Should the Courier receive deposits exceeding the bonded amounts, the Courier shall arrange to make multiple deliveries.

(vi) Safe Deposit: Upon request by a State Agency, subject to written approval by the Treasurer's Office, the Bank shall contract with a Courier for the placement of a safe in a State Agency office that allows State Agency personnel to deposit into the safe for same day credit to the State Accounts and for the Courier to collect deposits weekly or as needed.

(vii) Liability, Indemnification: For purposes of the Bank's agreement to indemnify, hold harmless and defend the State contained in Section 20 of this Agreement, the Couriers under contract with the Bank shall be deemed to be acting as an agent of the Bank in its performance of the courier services required in this subsection 27(E)(4)(g). In addition to any other obligation or liability the Bank may bear pursuant to Section 20, in the event of a loss which requires the reconstruction of checks, instruments, or other documents, the Bank shall bear the costs and provide all personnel and equipment necessary to so reconstruct; however, State Agencies will fill out Bank-provided forms declaring the contents of each Bank Bag.

h. The Bank shall provide data needed for automated bank account reconciliation between the Fiscal Agent Bank, the State Treasurer's Office, the SHARE system, and the Department of Finance and Administration. At a minimum, the information to be provided will include daily bank statements in BAI format, and monthly banking statements in Adobe PDF and Microsoft Excel formats. Additionally, the Bank will provide register reports detailing the status of controlled disbursements including paid/redeemed, outstanding, cancelled, voided and stop paid items.

F. Direct Deposit and Automated Clearinghouse Services

The Bank shall provide Electronic Funds Transfer (EFT) services as described in Exhibit E that allow recipients of recurring payments made by various State agencies to non-State entities to have their deposit accounts credited regularly through the Bank for amounts due and payable to them, if their deposit accounts are with members of the National Automated Clearing House Association. Such payments may include but are not limited to payments to custodial parties; payments of retirement benefits to beneficiaries of State retirement plans; payment of wages and salaries to State employees; payments to Human Services Department clients; and payments due to vendors authorized to receive payments via EFT. These payments will also include Personal Income Tax refund warrants. Payment accuracy shall be the responsibility of the Bank

The Bank shall provide ACH services to each Agency as outlined in Exhibit B. The bank shall also support auto-withdrawal requests from CSED's Child Support Enforcement System for non-custodial parties.

The Bank shall transmit, via electronic data transfer, to CSED's Child Support Enforcement System the EFT collections and returns files. The files shall be transmitted in the ACH file format no later than midnight of each Business Day. The Bank shall store files for ten (10) Business Days. The Bank shall create a daily online report of the incoming files that is retrievable by CSED employees.

G. Tax Remittance Collection

The Bank shall process ACH and wire transfer tax payments to the State in accordance with procedures established by the Taxation and Revenue Department (TRD). The Bank shall comply with national standards for ACH tax payments for originating financial institutions and receiving financial institutions. Additionally, the Bank will establish connectivity between TRD and the Bank to facilitate electronic file transfers through VPN or SSL to assure encryption of the data transmission.

H. Safekeeping Services

1.) General

Upon request by the Board and amendment of this Agreement pursuant to Section 2, the Bank shall provide safekeeping services. Safekeeping service charges for this service by the Bank shall be at the fees set forth in Exhibit C, attached hereto and incorporated herein.

2.) Separate Identification

Any certificated securities deposited for safekeeping with the Bank must be held by the Bank and kept physically separate from securities belonging to the Bank and clearly identified on the records of the Bank as belonging to the State. Uncertificated securities must be kept on the books of a mutually agreed upon depository, segregated on the books of the Bank, and clearly identified as belonging to the State.

3.) Servicing

a. Upon amendment pursuant to subsection 1), the Bank may provide safekeeping services for any securities or other instruments pledged as security to the Treasurer hereunder and delivered to the Bank by the Treasurer as custodian.

b. Nothing in this Agreement shall prevent the Bank from accepting deposits of State funds or acting as custodian for collateral pledged to secure deposits of the State pursuant to Sections 6-10-30 and 6-10-36 NMSA 1978. Such services are not covered in this Agreement but will be covered in a separate agreement to be entered into between the Bank, a third-party custodian and the State. The Bank shall collect and distribute all income for such securities to the pledgor or, in the event of default by pledgor, to the Treasurer.

I. Investment Services

The Treasurer will administer investment programs which will require same-day transfer of funds to the Custody Bank designated by the Board for settlement. As many as six (6) transfers may be made in a single working day. The Bank must adopt a reasonable procedure, subject to the Treasurer's approval, whereby it will act on instructions from the Treasurer on transfers. The validity of such transfer requests will be verified by the Treasurer via telephone, facsimile, or computer terminal.

J. Investment Administration

With the approval of the Board, as evidenced by its approval of this Agreement, the Bank may administer the Treasurer's short-term investment program at the direction of the Treasurer except for any period of time when the Treasurer has decided to administer this program in-house.

Whenever the Bank administers this program, the following terms and conditions shall apply:

1.) The purpose of the short-term investment program is to provide for the short-term liquidity needs of the State.

2.) The investments shall be in the form of overnight or short-term repurchase agreements secured by securities issued by the United States government or its departments or agencies, which are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies sponsored by the United States Government (GSEs).

3.) Administration of the short-term investment program is a ministerial service performed by the Bank, to be carried out upon the instructions of the Treasurer, the Deputy State Treasurer, or their designated representative, and for the account and investment risk of the State as set out in the investment policy approved by the Board, as it may be amended from time to time.

- a. The Bank shall obtain each business day, from a designated representative of the State Treasurer, the dollar amount and term of the short-term investment to be made on that day, if any.
- b. The Bank shall request bids from three (3) or more approved dealers in repurchase agreements each business day in order to obtain the best interest rate available on short-term repurchase agreements. Approved dealers shall be primary United States government dealers, banks, and other financial institutions having a net worth in excess of five hundred million dollars (\$500,000,000) in capital, who report directly to the Federal Reserve Board, chosen by the Treasurer and approved by the Board pursuant to the State Treasurer's Investment Policy, a list of whom shall be provided to the Bank and kept up to date by the Treasurer.
- c. On a daily basis, the Bank shall provide to the State Treasurer a detailed report reflecting daily repurchase agreement bid documentation. The report format shall be determined by the State Treasurer. Payments to the brokers for repurchase agreements will be executed by the Custody Bank only against contemporaneous delivery to the Custody Bank.
- d. The Bank shall assure that the maturity of collateral securities shall be acceptable to the Treasurer and the market value of the collateral shall be 102% of the dollar amount of the repurchase agreement. If the maturity date of the collateral is significantly longer than that of the repurchase agreement, then the collateral rate must be higher than 102% to compensate for market risk.
- e. The Bank shall obtain good delivery and a perfected interest in the securities securing each repurchase agreement and all collateral shall be held at the Custody Bank.

K. Correspondent Bank Services

The Bank may, from time to time, be requested by the State to enter into other Special Correspondent Bank relationships for the purpose of facilitating the provision of additional services to State agencies. All agreements with Special Correspondent Banks shall be subject to the Board's approval.

L. Credit and Debit Card Services

The Bank shall provide credit and/or debit card processing services, upon prior written approval of the director of the Board, to any Agency so requesting, subject to the terms and conditions set out in this subsection and those contained in the Merchant Services Operating Procedures as modified, attached hereto as Exhibit B. The Bank shall provide authorization services to those Agencies desiring to accept American Express cards, upon prior written approval of the director of the Board, as to the agreement

between the State and American Express, as amended, attached hereto and incorporated as Exhibit F to this Agreement “the Exhibit F Agreement”). The term of the Exhibit F Agreement shall run concurrently with the Agreement, which term ends on April 30, 2016, subject to earlier termination pursuant to Section 7 of the Agreement or extension, upon mutual agreement of the State and American Express, pursuant to the Exhibit F Agreement, which provides that in no event may it extend beyond December 1, 2016. Any amendment to this subsection 27(L), Exhibit B, the Exhibit F Agreement, or any attachments is subject to the procedures set forth in Section 2 of this Agreement. The Bank will not submit an additional charge to the State for these services. Transaction charges in the amount specified in Exhibit C will be billed to the applicable State Agency through invoice in accordance with the relevant provisions of this Agreement. Any merchant equipment to be purchased or leased by the Agency requesting those services shall be paid for by that Agency pursuant to a separate agreement between the Agency and the Bank. The Bank shall cooperate with any third-party processors under contract with any Agency currently or in the future. The third-party processor may be paid out of a statutorily-authorized convenience fee imposed by the Agency on the cardholder. The Agency may not impose any restrictions or conditions on the use or acceptance of any credit/debit card that are not imposed equally on the use or acceptance of any other charge, credit, debit or similar card or service.

M. Remittance Collection Services

The Bank shall process Electronic Funds Transfers of tax and fee payments to the State in accordance with procedures established by the specified Agency. The Bank shall comply with ANSI X12 and NACHA standards for electronic funds transfers.

N. Management Consulting

The Bank may from time to time be requested by the Board to provide analysis and recommendations regarding banking and financial services and to provide updates regarding changes in the Bank's operational and technical capabilities in order to provide optimum services. The bank shall not bill the state for such services except to the extent fees for such services are stated in Exhibit C.

O. Department of Workforce Solutions

The Bank shall provide all of the services set forth in the Agreement and those set out in this subsection to DWS. Further, DWS, as an agency of the State, shall be entitled to all of the benefits provided the State under this Agreement, and the Bank shall owe all of the duties and bear all of the responsibilities to DWS as it owes and bears to the State under the Agreement, including but not limited to the Bank's duty to indemnify pursuant to Section 20 of the Agreement.

In addition to those services described in the Agreement, the Bank shall provide these additional services to DWS:

1.) Deposit Services: DWS and each of its divisions may maintain such accounts as are deemed necessary by the DWS Secretary and the State Treasurer. Additional accounts may be added and any additional compensation must be negotiated with DWS and approved by the Board, subject to the terms and conditions set forth in this subsection, Section 2, and Section 36 of this Agreement. DWS accounts shall include, but not be limited to the following:

- a. Benefit Account (V-Warrant) – This account is used to pay unemployment insurance benefits to claimants. Benefit payrolls are processed daily based on a one (1) week Interactive Voice Response filing period by individual claimants. Funds are deposited to this account by electronic fund transfer.
- b. Clearing Account (H-Warrant) – This account accumulates receipts from employers for payment of unemployment insurance assessments. In

addition, any applicable refunds due employers are processed through this account. Deposits are made daily and must be transferred to the U.S. Treasury within a twenty-four (24) hour period as mandated by the United States Department of Labor.

- c. Cash Security Deposit Account – This suspense account is used to hold cash security deposits received from certain employers subject to the Unemployment Compensation Law. Transfers will be made via letter or electronic transfer as disbursements are processed through the Clearing Account. Warrants are not processed directly from this account.
- d. Public Works Apprenticeship and Training Account – This account is used to track employer contributions to establish an apprenticeship program by the Labor Relations Division of DWS.
- e. Labor Enforcement Fund – This account is used to account for registration fees from contractors and subcontractors collected by the Labor Relations Division of NM DWS for the purpose of administration and enforcement of the Public Works Minimum Wage Act.
- f. State Unemployment Trust Fund Account – Distributions to this account are from unemployment insurance taxes collected from employers in the state. These distributions will be invested by the State Investment Officer.

2.) Analysis Service:

For the Clearing and Benefit Accounts of DWS, the Bank shall prepare, per established federal requirements, and deliver to DWS by the twentieth (20th) day of the month following the month reported, the U.S. Department of Labor, Employment and Training Administration Form 8414 entitled "Income-Expense Analysis, UC Fund Clearing Account" and the U.S. Department of Labor, Employment and Training Administration (ETA) Form 8413 entitled "Income-Expense Analysis, UC Fund Benefit Payment Account," which will be certified by an authorized Bank officer.

- a. The U.S. Department of Labor Employment and Training Administration Form 8414 Income and Expense Analysis, UC Fund Clearing Account shall contain the following information:
 - i. As Shown by the Books of the Bank
 - (a) Prior month balance
 - (b) Day of the month
 - (c) Daily ledger balance
 - (d) Deposits to the Clearing Account
 - 1. Deposit number
 - 2. Deposit amount (omit cents)
 - (e) Withdrawal from the Clearing Account
 - 3. Deposit number
 - 4. Deposit amount (omit cents)
 - ii. Income Analysis
 - (a) Average Daily Balance
 - 1. Less: Average daily float
 - (b) Average daily collected balance
 - 1. Less 10% reserve
 - (c) Average daily loanable balance

- (d) Earning value
- iii. Expense Analysis
 - (a) Checks deposited - local
 - 1. Account maintenance fee
 - 2. Number of deposit
 - (b) Checks deposited – transit
 - 1. Cash
 - 2. Local
 - (c) Checks on account
 - 1. Transit – Foreign
 - 2. Returned
 - 3. Warrants
 - 4. CD's
 - (d) Other Costs
 - 1. ARP's
 - 2. ACH
 - 3. Wires
 - 4. Photos
 - 5. CEO
 - 6. Official Checks
 - (e) Total Costs
- iv. Net Profit/Loss
- b. The U.S. Department of Labor Employment and Training Administration Form 8413 Income and Expense Analysis, UC Fund Benefit Payment Account shall contain the following information:
 - i. As Shown by the Books of the Bank
 - (a) Prior month balance
 - (b) Day of the month
 - (c) Daily ledger balance (omit cents)
 - (d) Deposits to the Benefit Account
 - 1. Deposit number
 - 2. Deposit amount (omit cents)
 - (e) Withdrawal from the Benefit Account
 - 1. Deposit number
 - 2. Deposit amount (omit cents)
 - ii. Income Analysis
 - (a) Average Daily Balance
 - 1. Less: Average daily float
 - (b) Average daily collected balance
 - 1. Less 10% reserve
 - (c) Average daily loanable balance
 - (d) Earning value
 - iii. Expense Analysis
 - (a) Checks deposited - local
 - 1. Account maintenance fee
 - 2. Number of deposit
 - (b) Checks deposited – transit
 - 1. Cash
 - 2. Local

- (c) Checks on account
 - 1. Transit – Foreign
 - 2. Returned
 - 3. Warrants
 - 4. CD's

- (d) Other Costs
 - 1. ARP's
 - 2. ACH
 - 3. Wires
 - 4. Photos

- (e) Total Costs

iv. Net Profit/Loss

- c. The Bank shall provide to the State Treasurer's Office and to DWS, on a monthly basis, original DWS account analysis statements with cut-off dates as of the last day of the month. These statements will provide, for each individual account and for all accounts combined, a detailed description of services rendered by type, units, unit cost, total cost and equivalent balance.
- d. The Bank shall provide to the State Treasurer's Office, on a monthly basis, a DWS bank statement with the cut-off dates as of the last day of the month, for each bank account. The statement shall provide the detailed transactions processed through each account.

3.) Cash Management Improvement Act Services:

- a. The Bank will provide DWS with the necessary information and services to allow the DWS to comply with the federal Cash Management Improvement Act of 1990 ("CMIA 90"). In the event that DWS requires special or expanded services in this area, this subsection will be amended to provide for services and fees, pursuant to the provisions of this subsection, subsection 27(S) and Sections 2 and 36.

4.) Wire Transfer Services:

- a. The Bank shall process, pursuant to all applicable state and Federal laws and regulations, all incoming/outgoing Electronic Fund Transfers for credit or debit to the appropriate DWS accounts. Detailed wire transfer information will be faxed or electronically transferred to DWS.
- b. The Bank shall receive and immediately credit the specified DWS accounts with incoming wire transfers received during the business day.
- c. The Bank shall provide authorized DWS staff the capability to initiate wire transfers from DWS's own premises utilizing an electronic banking system and will ensure that appropriate internal controls are established to prevent unauthorized transactions from being initiated or processed.
- d. The Bank shall provide the capability of transferring funds among DWS accounts via electronic banking access system in coordination with the State Treasurer's Office.

5.) The Bank shall provide direct deposit services.

- 6.) On a daily basis:
- a. The Bank shall make available to DWS and the State Treasurer via an electronic banking system, all debit or credit entries and corrections to any DWS account. In addition, the Bank will issue to DWS by mail or other method acceptable to both parties, on a daily basis, a debit or credit memo supporting the above corrections. Such identification shall include, at a minimum, the type and amount of the adjustment, the reason for the adjustment, the total amount of the original transaction adjusted, and the date the adjustment is posted to the State Account. In the event the electronic bank system is not operational, the Bank will provide the information to DWS no later than 3:00 p.m. that day. DWS may at its discretion temporarily waive this requirement if it believes that its normal business operations will not be adversely affected.
 - b. The Bank shall make available to DWS and the State Treasurer the ledger balance and the amount of all warrants to be processed against each account for that day via the electronic banking system. In the event the system is not operating, the Bank will provide the information to DWS no later than 9:00 a.m.
- 7.) The Bank shall provide to DWS by the tenth (10th) Business Day of each month an electronic data file containing all transaction information required by the State Treasurer relating to warrants processed by the Bank's checking depository during the previous month.
- 8.) The Bank shall automatically forward to DWS for collection all original NSF items returned to the Bank. A copy shall also be forwarded to the State Treasurer's Office.
- 9.) Time of credit to DWS accounts:
- a. The Bank will accept all items delivered to it for deposit to DWS accounts. Deposits of checks, money orders, and similar negotiable instruments and deposits of currency and coin will be afforded consistent handling by the Bank whether processed by single or multiple Bank departments.
 - b. All items shall be credited to the accounts of DWS in a "collected" status, as indicated by the availability schedule attached hereto as Exhibit D.
 - c. If the Bank can credit DWS accounts earlier by reason of direct sends or courier trips, for obtaining credit availability earlier than the Federal Reserve Bank schedule, then the Bank shall credit the accounts of DWS at such earlier time.
 - d. Deposits of checks, money orders, and similar negotiable instruments delivered to the Bank's item processing department by 8:00 p.m. will receive same day "ledger" credit in DWS accounts. Deposits to the Bank's item processing department after 8:00 p.m. will be credited to the following day. Deposits of currency and coin to the Bank's main vault will receive same day ledger credit if received by 3:00 p.m. Deposits received after 3:00 p.m. will receive next day ledger credit.
- 10.) The Bank will provide to DWS, two-part carbonless deposit slips for each account. The deposit slips will contain DWS name, address, account name and account number. The cost of these, and any other banking supplies purchased through the Bank, will be passed through to DWS and appear on the DWS Account Analysis statement.

To the extent that the description of services set forth in this subsection conflicts with those elsewhere in the Agreement, the description of services to be provided to DWS set forth here controls.

P. Reloadable Debit Card Services

Bank shall provide these services through its subcontractor, Xerox, pursuant to the following provisions:

1.) New Mexico Human Services Department

a. The Bank shall provide State of New Mexico reloadable debit card services for authorized custodial parties receiving State of New Mexico Child Support Payments (hereinafter "Reloadable Debit Card services") as one means of disbursing child support payments to authorized payees ("Enrollees") under the terms and conditions set out in this Subsection 27(P)(1) (the "Program").

b. The New Mexico Human Services Department (HSD) shall fund the reloadable debit accounts ("Deposit Accounts") used in providing Program services by initiating entries through the ACH system. HSD shall be responsible for obtaining the required authorizations from Enrollees and shall enter enrollment information via the Bank website that is available for this purpose, update the system after receipt of notice from Bank that a debit card has been activated, and prepare and send an electronic file to the Bank each Business Day containing the necessary information to allow Bank to make funds available to those Enrollees whose cards have been activated. HSD shall also notify Bank promptly of any termination of an Enrollee. If the Bank receives notice that the Enrollee has been terminated, the Bank will not close the Enrollee's account until and unless it is drawn down to a zero balance.

c. Each time HSD submits to the Bank the enrollment information described in subparagraph B above, it certifies that to HSD's knowledge, each of the following statements are true and accurate as of such date:

- i) HSD has obtained the Enrollee's authorization to transfer funds to the Program account.
- ii) The Enrollee has not cancelled the authorization to transfer child support funds to the Program account.

d. The Bank, upon notice from HSD that an authorized custodial party has enrolled, shall set up an account on its system and deliver to each Enrollee a card carrier containing the reloadable debit card, the State of New Mexico Reloadable Debit Card Deposit Agreement ("Deposit Agreement"), the Schedule of Fees ("Fee Schedule"), user information on the card carrier and the Bank's privacy policy. The Bank shall activate each card upon request by the Enrollee and notify Agency of that activation within one (1) day of activation. All cards shall reside within the State of New Mexico subclient file, which identifies them as child support funds. Upon receipt of the ACH file from HSD and in accordance with NACHA rules, the Bank shall deposit the amount of funds as instructed by the Agency to each Enrollee's debit card account. The Bank shall provide to HSD monthly reports of name and address changes reported to the Bank. The Bank shall notify the Agency within one (1) day of any decision by the Bank to suspend or close an Enrollee's Account.

e. The Fee Schedule is attached hereto and incorporated herein as Exhibit C. The Bank's charges to the Enrollee are those set out in the Fee Schedule. The Bank shall not amend the Fee Schedule without prior approval of the Board. The Bank shall not submit any additional charge to the State for these Program Services.

f. HSD and the Bank shall submit to each other, for prior written approval, any advertising or other materials in connection with the Program; provided, however, no such materials shall be inconsistent with the provisions of this Subsection 27(P)(1) and the Fee Schedule. The State hereby authorizes the Bank to use the State of New Mexico name on the plastic debit card and all approved promotional and disclosure materials in connection with this service.

g. The Bank shall provide unlimited toll-free and online customer service assistance for use by HSD and Enrollees to resolve issues related to the Program.

2.) Department of Workforce Solutions

a. The Bank shall provide Reloadable Debit Card unemployment insurance payment (UIP) services to the Department of Workforce Solutions (DWS) as one of the means by which DWS will disburse unemployment insurance payments to parties eligible to receive State of New Mexico unemployment insurance benefits (each a "UIP Enrollee") under the terms and conditions set out in this Subsection 27(P)(2) (the "UIP Program").

b. DWS shall fund the reloadable debit accounts ("Deposit Accounts") used in providing UIP Program services by initiating entries through the ACH system. DWS shall be responsible for: (i) obtaining the required authorizations from, and distributing the informational materials which describe the Reloadable Debit Card UIP Services (the "Informational Materials") to each UIP Enrollee; (ii) providing enrollment information to the Bank via an electronic file; (iii) updating the Agency system after receipt of notice from the Bank that a Deposit Account has been established; and (iv) preparing and sending an electronic file to the Bank each Business Day containing the necessary information to allow the Bank to make funds available to those UIP Enrollees whose Deposit Accounts have been established. DWS shall also notify Bank promptly if a UIP Enrollee no longer meets eligibility requirements to participate in the UIP Program. If the Bank receives notice that the UIP Enrollee is no longer eligible to participate, the Bank will not close the UIP Enrollee's Deposit Account until and unless the account is drawn down to a zero balance.

c. Each time DWS submits to the Bank the enrollment information described in subparagraph B above, it certifies that to DWS's knowledge each of the following statements are true and accurate as of such date:

i) DWS has provided to the UIP Enrollee the Informational Materials and obtained appropriate authorization from the UIP Enrollee and the Automated Clearing House entries conform to that authorization and comply with NACHA Rules.

ii) DWS makes the same warranties to the Bank as the Bank makes under Section 2.2 (or any successor section) of the NACHA Rules.

iii) The UIP Enrollee has not cancelled the authorization to transfer unemployment insurance benefits funds to the UIP Program Deposit Account.

d. The Bank, upon receipt of enrollment information from DWS, shall set up an account on its system and deliver to each UIP Enrollee a card carrier containing

the reloadable debit card, the State of New Mexico Reloadable Debit Card for Unemployment Insurance Benefits Deposit Agreement ("Deposit Agreement"), the Schedule of Bank Fees, user information on the card carrier and the Bank's privacy policy. The Bank shall activate each card upon request by the UIP Enrollee. All cards shall reside within the State of New Mexico subclient file, which identifies them as unemployment insurance benefits funds. Upon receipt of the ACH file from DWS and in accordance with NACHA rules, the Bank shall deposit the amount of funds as instructed by DWS to each UIP Enrollee's Deposit Account. The Bank shall notify DWS within one (1) Business Day of any decision by the Bank to suspend or close an UIP Enrollee's Deposit Account.

e. The Fee Schedule is attached hereto and incorporated herein as Exhibit C. The Bank's charges to the UIP Enrollee are those set out in the Fee Schedule. All fees incorporated in the Fee Schedule must be in accordance with federal law and mandates. The Bank shall not amend the Fee Schedule without prior approval of the Board, and prior written notice to DWS. The Bank shall not amend or revise the Fee Schedule in any manner that is in violation of state or federal law pertaining to Unemployment Insurance. The Bank shall not submit any additional charge to the State for these Reloadable Debit Card UIP Services. As between the State and the Bank, in the event of any conflict between this Subsection 27(P)(2) and the Fee Schedule, or the Informational Materials or other marketing or operational documents, this Subsection and the Agreement of which it is a part shall control.

f. DWS and the Bank shall submit to each other, for prior written approval, any advertising or other materials in connection with the UIP Program; provided, however, no such materials shall be inconsistent with the provisions of this Subsection 27(P)(2) and the Fee Schedule. The State hereby authorizes the Bank to use the State of New Mexico name on the plastic debit card and all approved promotional and disclosure materials in connection with this service.

g. The Bank shall provide toll-free and online customer assistance service for DWS and UIP Enrollees to resolve issues related to the UIP Program.

3.) Children, Youth and Families Department

a. The Bank shall provide State of New Mexico reloadable debit card services for foster parents and home child care providers receiving payment for services delivered to foster children and others in the care of the Children, Youth and Families Department (CYFD) (hereinafter "CYFD Reloadable Debit Card services") as one means of disbursing payments to such foster parents and home child care providers ("CYFD Enrollees") under the terms and conditions set out in this Subsection 27(P)(3) (the "CYFD Program").

b. CYFD shall fund the reloadable debit accounts ("Deposit Accounts") used in providing CYFD Program services by initiating entries through the ACH system. CYFD shall be responsible for obtaining the required authorizations from CYFD Enrollees and shall enter enrollment information via the Bank website that is available for this purpose, update the system after receipt of notice from Bank that a debit card has been activated, and prepare and send an electronic file to the Bank each Business Day containing the necessary information to allow Bank to make funds available to those CYFD Enrollees whose cards have been activated. CYFD shall also notify Bank promptly of any termination of a CYFD Enrollee. If the Bank receives notice that the CYFD Enrollee has been terminated, the Bank will not close the CYFD Enrollee's account until and unless it is drawn down to a zero balance.

c. Each time CYFD submits to Bank the enrollment information described in subparagraph b above, it certifies that to CYFD's knowledge, each of the following statements are true and accurate as of such date:

- i) CYFD has obtained the CYFD Enrollee's authorization to transfer funds to the Program account.
- ii) The CYFD Enrollee has not cancelled the authorization to transfer funds to the CYFD Program account.

d. The Bank, upon notice from CYFD that a CYFD Enrollee has enrolled, shall set up an account on its system and deliver to each CYFD Enrollee a card carrier containing the reloadable debit card, the State of New Mexico Reloadable Debit Card Deposit Agreement ("Deposit Agreement"), the Schedule of Fees ("Fee Schedule"), user information on the card carrier and the Bank's privacy policy. The Bank shall activate each card upon request by the CYFD Enrollee and notify CYFD of that activation within one (1) day of activation. All cards shall reside within the State of New Mexico sub-client file, which identifies them as CYFD provider payment funds. Upon receipt of the ACH file from CYFD and in accordance with NACHA rules, the Bank shall deposit the amount of funds as instructed by CYFD to each CYFD Enrollee's debit card account. The Bank shall provide to CYFD monthly reports of name and address changes reported to the Bank. The Bank shall notify CYFD within one (1) day of any decision by the Bank to suspend or close a CYFD Enrollee's Account.

e. The Fee Schedule is attached hereto and incorporated herein as Exhibit C. The Bank's charges to the Enrollee are those set out in the Fee Schedule. The Bank shall not amend the Fee Schedule without prior approval of the Board.

f. CYFD and the Bank shall submit to each other, for prior written approval, any advertising or other materials in connection with the CYFD Program; provided, however, no such materials shall be inconsistent with the provisions of this Subsection 27(P)(3) and the Fee Schedule. The State hereby authorizes Bank to use the State of New Mexico name on the plastic debit card and all approved promotional and disclosure materials in connection with this service.

g. The Bank shall provide unlimited toll-free and online customer service assistance for use by CYFD and CYFD Enrollees to resolve issues related to the CYFD Program.

Q. Online and Other Receipt Acceptance Services

Bank shall provide these services pursuant to the terms and conditions of the Payment Gateway User Agreement attached hereto and incorporated into the Agreement as Exhibit G. The fees for these services are those set out in Exhibit C to this agreement. Further, the terms and conditions of Exhibit G are also subject to the following provisions:

1. Subject to the Board director's approval of these services requested by an Agency or one of its divisions, an Agency may use the specified services under the following terms and conditions once the Agency has completed any set up forms and testing requirements.
2. These services allow an Agency to have members of the public pay the Agency for services by using the Agency's website. An Agency's customers can authorize payments to the Agency through commands on its website or via touch-tone or, where available, voice

commands over the telephone. Payments can be made via the Automated Clearing House (ACH), and credit or debit cards through the applicable card association networks.

a. An Agency has the following options to collect payment information from the members of the public: the Bank hosts the website; an Agency's existing website is used to collect identifying information about the member of the public and then such individual is transferred electronically to the Bank's website to enter payment information; or the Agency's existing website is used to collect all information and the Agency sends an electronic file to Bank with the payment information. An Agency will have the option to use the various methods available for the presentment of information, as outlined below:

i) For website payments, members of the public may log onto the applicable website to initiate payments. Members of the public are authenticated depending on the method chosen by the Agency during implementation.

ii) For Interactive Voice Response or touch tone payments, members of the public may dial a phone number provided by the Agency to initiate payment. The phone number may be Agency-owned or provided by the Bank.

iii) For person-to-person payments via telephone, members of the public may contact the Bank to initiate a payment. For in-person payments at an Agency's physical location, the Agency personnel may use the website to enter payment information on behalf of the members of the public.

b. To initiate payment, the members of the public enter or provide required remittance information as defined by the Agency (i.e. contact name, account number, social security number).

c. These services support both one-time payments (e.g., taxes, fees or donations) and enrollment (for automatic recurring payments). An Agency receives information regarding the total amount due from each member of the public.

d. Remittance reporting is available for these services through an automated file exchange or online. Each Agency is responsible to review and ensure that the available remittance reports are sufficient to meet its needs.

f. The Bank shall provide unlimited toll-free and online customer service assistance for Agencies and constituents to resolve issues related to these services.

3. For payments made to an Agency via ACH the following provisions apply:

a. Payments will be made by creation of an ACH Entry to credit the Agency's account with the Bank. The Agency will obtain the authorization of each member of the public to debit their account. The Agency acts as the Originator, the member of the public acts as the Receiver and the Bank acts as the Originating Depository Financial Institution with respect to the Entry. The Agency certifies to the Bank each time the Agency uses the receipt acceptance service that it obtained appropriate authorization from each Receiver and that Entries conform to that authorization and comply with the NACHA Rules.

The Agency also makes to the Bank the same warranties as the Bank makes under Section 2.2 (or any successor section) of the NACHA Rules.

b. The Agency authorizes the Bank to create an ACH Entry on the Agency's behalf as provided in the User Documentation and the NACHA Rules.

- c. Payments, including chargebacks and adjustments, if any, made via credit or debit cards through the applicable card association networks are covered by the terms and conditions of the Merchant Services Operating Procedures set forth in Exhibit B to the Agreement as amended from time to time.
4. The Bank's charges to the Board and an Agency for these services are set out in Exhibit C. The Bank shall not submit any additional charges to an Agency or the Board for these services. The Board shall pay the applicable charges in the amount set forth in the monthly statement by issuance of a warrant in that amount; provided, however, the Agency will pay all fees associated with Merchant Services as set forth in Exhibit B. Service codes set forth in Exhibit C for the specific service will appear on the monthly statements. Further, the Bank must obtain prior approval from an Agency before performing services for which any miscellaneous fees apply, as set forth in Exhibit C, which approval shall include a limit on the fee amount to be charged for those services.
5. The Bank will only provide the specified service to an Agency after receiving written evidence from the Agency that the Director of the Board has approved the Agency's use of such service.
6. The Bank will make every effort to develop, negotiate, and have ready for implementation prior to the effective date of this Agreement a convenience or service fee model for online and other receipt acceptance services. This service model will comply with Section 6-10-1.2 NMSA 1978, as amended. The service will include collection of a service fee that is a variable or fixed percentage of the principle transaction from the payee/consumer at the time of sale and will establish chargeback procedures agreeable to the State. It will cover all merchant fees associated with both the principle and service fee transactions such as interchange expense, monthly processing fees, any fees associated with the processing of chargebacks but not the chargeback itself, etc. so that the cost of the transaction is paid by the customer. The service fee and principle transaction will post as two separate entries on the payee's statement. The Bank will make available a service fee report for tracking and reconciliation. The service fee may be applied to all payment channels and the service will allow the disclosure that a service fee is being charged and allow the customer to decline this fee by cancelling the transaction.

R. Electronic Bill Presentment and Payment

The Bank shall provide this electronic bill presentment and payment product, which shall be branded to each Agency's logo and look, to any Agency upon the State Contract Administrator's written approval. This turnkey solution allows the Agency to select the options that fit their needs, such as payment channels, payment types, presentment options, TEL payments, and enrolled or one-time payments. No software or hardware is necessary to implement this service; access is provided through the internet. The formatting of this secure web-presentment of bills or invoices in html or pdf will be in either summary or detail format as determined by each Agency. As directed by the Agency, the obligor will receive email notification of the presence of a new bill to review and pay via ACH. This service includes an administrative module for customer service, payment research, and to allow telephone payments. That module includes 12 standard reports, which each Agency must represent to be sufficient for its purpose prior to State Contract Administrator's approval. This service allows the Agency to send a bill file and receive a daily remittance file of payments. The files may be, at the Agency's option, uploaded to or downloaded from the application, or sent via transmission channel to the Bank. The fees for this service are those set out in Exhibit C to this Agreement. Further, following the set-up period, the Bank must obtain prior written approval from an Agency before performing services for which any hourly programming rates apply, which approval shall include a limit on the fee amount to be charged for those services.

S. Additional Services

The State may request additional services to be provided by or billed through Account Analysis as may be required for training, new services, or enhancement of existing services. Any additional services during the term of this Agreement, the cumulative cost of which is estimated not to exceed \$50,000 in a fiscal year or \$100,000 over the term of the Agreement, shall require prior written approval of the director of the Board of Finance. Any additional services to be provided during the term of this Agreement, the cumulative cost of which is estimated to exceed \$50,000 in a fiscal year or \$100,000 over the term of the Agreement, shall require a written amendment pursuant to Section 2 of this Agreement and prior approval of the Board of Finance.

28. Reports

The Bank shall furnish such written, telephone and electronic reports as may be requested by the State and which the Bank is reasonably capable of producing.

29. Errors

All errors occurring in the operation of this Agreement shall be corrected in a timely manner and back value credit given to the original date of the transaction for purposes of the account analysis. Errors will be separately stated as backdated adjustments. Compensation may be requested either by the Treasurer or the Board.

30. Subcontracting

The Bank shall provide notice to the Board if it subcontracts any portion of the services to be performed under this Agreement. The Bank shall remain fully responsible the performance of all obligations performed by a subcontractor.

31. Release

The Bank, upon final payment of the amount due under this Agreement, releases the Board, its officers and employees, and the State from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Bank agrees not to purport to bind the State to any obligation not assumed herein by the State, unless the Bank has express written authority to do so, and then only within the strict limits of the authority.

32. Confidentiality

Any confidential information provided to or developed by the Bank in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Bank without the prior written approval of the Board, except as may be required by the Inspection of Public Records Act. To the extent that any information provided to or acquired by the Bank pursuant to this Agreement constitutes "return information" of a "taxpayer" as those terms are defined under NMSA 1978, § 7-1-3S and NMSA 1978, § 7-1-3Y, the Bank shall be subject to and bound by the confidentiality provisions of NMSA 1978, § 7-1-8-8.10.

33. Equal Opportunity Compliance

The Bank agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Bank agrees to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this the Fiscal Agent Agreement. If

the Bank is found to be not in compliance with these requirements during the life of this Agreement, the Bank agrees to take appropriate steps to correct these deficiencies.

34. Applicable Law

This Agreement shall be governed by the laws of the State of New Mexico.

35. Waiver

The Bank and the Board agree that no waiver of any breach of this Agreement or any of the terms or conditions thereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid, alleged or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

36. Charges and Compensation

All costs of services to the State are detailed in the Bank's Fee Schedule attached to this Agreement as Exhibit C. No other costs to the State shall be charged without prior written approval of the Board, and pursuant to the provisions of Section 2. The service costs shall not be changed during the term of this Agreement except as follows:

A. Bank - Controlled Costs:

Each year during the term of this Agreement, commencing on May 1, 2014 and each May 1 thereafter, Bank-controlled costs may be increased or decreased, based upon the actual increase or decrease in costs. If costs increase, the annual increase shall be the lesser of the actual cost increase or the cost as set out in Exhibit C multiplied by .8 of the GNP Implicit Price Deflator for the previous calendar year as published in the U.S. Department of Commerce's Survey of Current Business or successor publication.

B. Third-Party Costs:

Costs imposed by third-party service providers such as the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, or by other vendors of services such as merchant services, couriers, item processing and collection and information services, may be increased or decreased by the actual amount of increase or decrease, effective upon the date of such increase or decrease. The Bank shall notify the Agency in writing of any event expected result in an increase in third-party costs of more than \$50,000 in a fiscal year or \$100,000 over the term of the Agreement within ten (10) Business Days of becoming aware of the event. The Bank shall receive prior written approval from the Agency to pass on to the State any new third-party costs for which the service provided is optional for the State.

C. Special Correspondent Bank Cost:

Any Special Correspondent Bank fees shall be as provided in the Special Correspondent Bank agreements, and, if passed through the Bank, the fees shall be billed through a separate invoice.

D. Cost Adjustment:

Any adjustment(s) in the Bank's cost of services which result(s) in a net decrease in the costs of services to the State or an increase in efficiency to the State which provide(s) additional investable balances may be approved and put into effect by the contract administrators and submitted to the Board for post approval.

E. Service Charge Computation:

For the services provided under this Agreement, the charges for services shall be computed in the following manner:

1. Bank shall multiply the monthly volume of each activity provided to the State by the unit price for the activity contained in Exhibit C of this Agreement. The Bank shall add the individual activity charges to arrive at a "total monthly service charge" and then apply the earnings credit allowance as calculated pursuant to subsection 2 below to the total monthly service charge to determine the "adjusted monthly service charge". Each month, the State will pay all of the net monthly service charge due the Bank by issuance of a warrant in the appropriate amount to the Bank. At the State's option, the State may compensate the Bank by leaving on deposit with the Bank a Compensating Balance sufficient to accrue an earnings credit allowance that approximates the net monthly service charge. In no event shall any account of the State be debited for payment of Bank service charges.

2. The Bank agrees to apply the earnings credit allowance as payment against each month's total monthly service charge. The earnings credit allowance shall be calculated upon the Collected Balances in the State Accounts. The monthly earnings credit allowance shall be calculated on an actual day's basis, based on a 365-day year, using an interest rate equal to the higher of a) the prior month's 91-day Treasury bill median auction rate or b) 50 basis points (0.50%) on Collected Balances remaining each day in the State Accounts (the "Earnings Credit Rate"). To determine each month's earnings credit allowance for each account the Bank shall multiply the Earnings Credit Rate of interest times the Average Daily Collected Balance in each account times the quotient of the number of days in the month divided by 365. $\text{Earnings Credit Allowance} = \text{Average Daily Collected Balance} \times \text{Earnings Credit Rate} \times \text{number of days in month}/365$.

3. It is not the intention of the State to maintain monthly balances in excess of balances necessary for compensation for services. In the event that the application of the Earnings Credit Allowance calculated pursuant to subsection 2 above produces a credit in excess of any total monthly service charge, the Bank agrees to apply such excess as credit towards the following months' adjusted monthly service charges. Conversely, the State shall compensate for any deficit either by increasing its balances in the account during the following month or by paying the required fee.

F. Special Billing Procedures

1. Department of Workforce Solutions (DWS) and Public Schools Insurance Authority (PSIA) shall be responsible for paying the fees and costs attributable to work performed for DWS and PSIA under this Agreement directly to the Bank, which fees and costs shall be calculated according to the rates set forth in Exhibit C to this Agreement and pursuant to the provisions of the Agreement. Those fees and costs shall be billed directly to DWS and PSIA on a monthly basis, and copies should be included in the monthly account analysis and billing sent to the Board for informational purposes.

2. HSD's CSED shall be responsible for paying the fees and costs attributable to Electronic Data Interface (EDI) and Lockbox Services under this Agreement directly to the Bank, which fees and costs shall be calculated according to the rates set forth in Exhibit C to this Agreement and pursuant to the provisions of the Agreement. Those fees and costs shall be billed directly to CSED on a monthly basis, and copies should be included in the monthly account analysis and billing sent to the Board for informational purposes.

3. If written notice is provided by the State Treasurer requesting that the Local Government Investment Pool be included in the definition of State Accounts as defined in this Agreement, the State Treasurer shall be responsible for paying the fees and costs incurred as a result of the Bank's provision of services related to the Local Government Investment Pool,

which fees and costs shall be calculated according to the rates set forth in Exhibit C to this Agreement and pursuant to the provisions of the Agreement. Those fees and costs shall be billed directly to the State Treasurer on a monthly basis, and copies should be included in the monthly account analysis and billing sent to the Board for informational purposes.

4. The Department of Health (DOH) shall be responsible for paying the fees and costs attributable to Lockbox Services provided to DOH under this Agreement directly to the Bank, which fees and costs shall be calculated according to the rates set forth in Exhibit C to this Agreement and pursuant to the provisions of the Agreement. Those fees and costs shall be billed directly to DOH on a monthly basis, and copies should be included in the monthly account analysis and billing sent to the Board for informational purposes.

37. Average Daily Collected Balance

In preparing the monthly account analysis statements for each account, the Bank shall compute an "Average Daily Collected Balance." The Average Daily Collected Balance for an account for a month shall be defined as the average daily ledger balance minus the average daily balance for uncollected deposits (float).

Average Daily Ledger Balance
Less: Average Daily Balance
for Uncollected Deposits
Equals: Average Daily Collected Balance

All deposit items drawn on the Bank, Federal Reserve book entries, and wire transfers of funds received each day shall be given full and immediate credit in determining Collected Balances. Similarly, accounting entries in favor of the State at the Bank shall be included in a day's computation of ledger and Collected Balances.

38. Average Daily Balance for Uncollected Deposits

The "Average Daily Balance for Uncollected Deposits" shall be defined as the average daily amount of deposits to State Account(s) that are in the process of clearing the banking system during the month. Except as provided herein, estimates or float factors shall not be used to determine uncollected deposits. For deposits to State Account(s) that the Bank clears through a Federal Reserve Bank, the Bank's availability schedule shall determine the computation of uncollected deposits. For deposits to State Account(s) that the Bank clears through other financial institutions, the computation of uncollected balances shall be based upon actual results achieved by the Bank, if such actual results are more favorable to the State than would have been achieved by following the Bank's availability schedule. The amount of State warrants included in deposits to State Account(s) shall not be included in the computation of uncollected deposit balances. Availability will be assigned to the State's deposited items as per the Bank's Availability Schedule, as shown in Exhibit D, which includes a float factor for items drawn on banks located outside the State of New Mexico.

39. Assumption of Obligations and Related Costs

The Bank agrees that it shall conduct a reconciliation of all accounts transferred no later than thirty (30) days after assuming its obligations under this Agreement. The Bank agrees that it shall bear any and all costs associated with the transfer and assumption of obligations by the Bank under this Agreement.

40. Costs of Transfer to Successor Fiscal Agent

The Bank agrees that it shall conduct a reconciliation of the transition no later than thirty (30) days after any transfer of the fiscal agent relationship. The Bank agrees that it shall bear all costs associated

with any transfer of any accounts or other assets of the State to any successor fiscal agent bank upon its without cause termination of this Agreement

41. Continuing Obligation

For sixty (60) days following expiration or termination of this Agreement, the Bank agrees that it will be under a continuing duty, without charge to the State, to comply with the terms and conditions of this Agreement until all assets and funds of the State have been successfully transferred to the successor fiscal agent bank.

42. New Mexico Employees Health Coverage.

A. If the Bank has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, Bank certifies, by signing this Agreement, to:

1.) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Bank and the State exceed one million dollars or;

2.) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Bank and the State exceed \$500,000 dollars or;

3.) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Bank and the State exceeds two hundred fifty thousand dollars (\$250,000).

B. The Bank agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. The Bank agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

43. HIPAA Compliance


The Bank (as a Business Associate) shall enter into any separate agreements with the New Mexico Department of Health (as a Covered Entity) and any other individual Agency as may be necessary to ensure the State's and the Bank's compliance with the Health Insurance Portability and Accountability Act of 1966, Public Law 104-191 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and regulations promulgated thereunder by the U.S. Department of Health and Social Services, and any subsequent amendments or modifications thereto. Notwithstanding the provision of any such agreement, the Bank may not charge any fees or expenses other than those contained in Exhibit C to this Agreement relating to the required compliance without prior approval of the Board pursuant to Section 2 of this Agreement.


IN WITNESS WHEREOF, the parties to this Agreement have caused the same to be executed by their duly authorized officers, effective May 1, 2014.

STATE OF NEW MEXICO
STATE BOARD OF FINANCE


Governor and President of the
State Board of Finance

WELLS FARGO


Vice President


Board's Legal Counsel – Certifying Legal Sufficiency as to the Agreement

THIS AGREEMENT has been approved by the General Services Department, State Purchasing Division.

NEW MEXICO GENERAL SERVICES DEPARTMENT


State Purchasing Agent

The records of the Department of Taxation and Revenue reflect that the Bank is registered with the Department of Taxation and Revenue of the State of New Mexico to pay gross receipts and compensation taxes.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT
Contractor ID No. 02-313359-00-7



THE FOLLOWING, while not parties to this Agreement, have reviewed the Agreement and found it acceptable.

STATE TREASURER

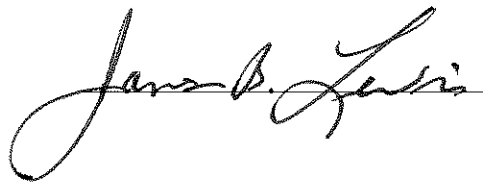


EXHIBIT A

FIELD OFFICES AND REMOTE LOCATIONS

Existing Courier Pick-Up Schedule

Service Name	Address	City	Zip
RPD Tax & Revenue	1200 S St Francis Dr	Santa Fe	87504
MVD Santa Fe	2544 Camino Edward Ortiz	Santa Fe	87501
MVD Albuquerque1	801 4th St NW	Albuquerque	87102
MVD Albuquerque3	11500 Menaul Blvd NE	Albuquerque	87112
MVD Albuquerque4 Suite G190	4574 San Mateo Blvd NE	Albuquerque	87109
MVD Roswell	200 E Wilshire Blvd	Roswell	88201
MVD Clovis	814 W 6th St	Clovis	88101
MVD Las Cruces Suite 357	505 S Main St	Las Cruces	88001
MVD Silver City	1876 Hwy 180 E	Silver City	88061
MVD Raton	1277 S 2nd St	Raton	87740
MVD Portales	1410 S Avenue O	Portales	88130
MVD Las Vegas	2522 Ridgerunner Rd	Las Vegas	87701
MVD Gallup	1710 E Aztec Ave	Gallup	87301
MVD Belen Suite A	100 S 5th St NE	Belen	87002
MVD Los Lunas	1204 Main St	Los Lunas	87031
MVD Espanola	1121 Santa Clara Peak Rd	Espanola	87532
MVD Taos	1038 S Salazar Rd	Taos	87571
MVD T or C	1912 N Date St	Truth or Consequences	87901
MVD Moriarty	201 Broadway St	Moriarty	87035
MVD Socorro	102 S 6th St	Socorro	87801
MVD Grants	1016 Nimitz Ave	Grants	87020
MVD Santa Fe - 34A Rm 2132	1100 S St Francis Dr	Santa Fe	87504
MVD Albuquerque - 34D-1 Suite	505 Marquette Ave NW	Albuquerque	87102
MVD Los Alamos	997 Central Ave	Los Alamos	87544
MVD Las Cruces2	120 W Picacho Ave	Las Cruces	88004
MVD Rio Bravo Suite D10 & D11	3211 Coors Blvd SW	Albuquerque	87121
MVD Farmington Suite N	3501 E Main St	Farmington	87402
MVD Carlsbad	3607 National Parks Hwy	Carlsbad	88220
MVD Tucumcari	122 W Main St	Tucumcari	88401
MVD Alamogordo	263 Robert H Bradley Dr	Alamogordo	88310
MVD Ruidoso #3	301 Hwy 70 W	Ruidoso	88345
Museum	180 Bataan Memorial Bldg	Santa Fe	87501
Department of Workforce Solutions	401 Broadway Blvd NE	Albuquerque	87102
First Judicial District Court	100 Catron St	Santa Fe	87504
Tax & Rev. Dist. Audit Ste 102	5301 Central Ave NE	Albuquerque	87108
Tax & Rev. Dist. Audit Bldg #2	2540 El Paso Rd	Las Cruces	88004
Game & Fish	1 Wildlife Way	Santa Fe	87507
HSD Albuquerque	1015 Tijeras Ave NW	Albuquerque	87102
HSD Santa Fe La Prensa	39A Plaza La Prensa	Santa Fe	87507
HSD Santa Fe Pacheco	2009 S Pacheco St	Santa Fe	87505
HSD Roswell	2732 N Wilshire Blvd	Roswell	88201
HSD Hobbs	2120 N Alto Dr	Hobbs	88240
NM HSD 18th Street	11010 18th St NW	Albuquerque	87102
NM HSD Los Lunas	445 Camino del Rey	Los Lunas	87031
NM HSD Rio Rancho	4363 Jager Dr NE	Rio Rancho	87144
HSD Alamogordo	2000 Juniper Ave	Alamogordo	88310

EXHIBIT B

MERCHANT SERVICES AGREEMENT



X F X 037 X K X 566357 K

Wells Fargo Merchant Services

Application

File Name: 566357

Merchant Name: National Hispanic Cultur

For additional information please contact:

BILL COWARD
(602) 378-5373
Sales Consultant

State of New Mexico

NO Signatures

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

If you have received this communication in error, please notify us immediately by telephone at 1-800-369-8423.

The M2 FAX number is 1-866-858-7844 or 1-515-226-7575. Thank you.

Form# 037

MERCHANT PROCESSING APPLICATION

Merchant #

File # 566357

Loc. 1 of 55



YOUR BUSINESS INFORMATION

Your DBA/Outlet Name: **National Hispanic Cultur** Your Business Legal Name: **State of NM/DCA**

DBA Address (No P.O. Box): Suite # City: State: Zip Code:
1701 4th Street, SW Suite # **Albuquerque** NM **87102**

Head Office Name: Contact Name: Contact Phone:
State of NM/DCA **Frances Armijo** **(505) 724-4771**

Head Office Address: Suite # City: State: Zip Code:
105 West Palace Ave. Suite # **Santa Fe** NM **87501**

Owner/Partner/Officer Name: Title: % of Ownership: Home Phone: Social Security Number:
Stephanie SchardinClarke **CORP. OFFICER** **0** **(905) 827-3930** **() -**

Home Address: City: State: Zip Code: Personal Guaranty:
181 Bataan Memorial Bldg **Santa Fe** **NM** **87501** Yes No

Owner/Partner/Officer Name: Title: % of Ownership: Home Phone: Social Security Number:
() -

Home Address: City: State: Zip Code: Personal Guaranty:
() - Yes No

Owner/Partner/Officer Name: Title: % of Ownership: Home Phone: Social Security Number:
() -

Home Address: City: State: Zip Code: Personal Guaranty:
() - Yes No

Sole Ownership Partnership Non-Profit Public Private Corp.

Month/Yr. Started: **01/02** # of Employees: **35** State Incorp: **NM**

Mag Swipe **90%** + Keyed Manually **10%** = 100% POS Cardswipe/imprint **80%** + Mail Order **10%** + Home () %
 + Internet % + Tradeshows % + Rec. Trans % **100%**

Total Cash and Credit Sales: **\$100,000,000** Total Annual MC/Visa Volume: **\$315,000**
 Total Annual Discover Volume: **\$520,628**
 Total Annual Amex Volume: **\$0.00**
 Total Relationship Annual Card Volume: **\$835,628**

Average Ticket/Sales: **\$60**

Product/Services You Sell: **GOVERNMENT EMERGING MARKET, Govt run museum**

Are customers required to leave a deposit? Yes No

Merchant Type: **Government** Fed Tax ID: **056000565** EIN

Business Checking Account Number: **4123107724** Transit Routing Number/ABA: **121300248**

For Non Wells Fargo Accounts:
 Attach a Copy of Funding Check on Separate Page or Provide Blank Letterhead / Logo with Typed ABA / DDA Signed by Bank Officer

Lessor: First Data Merchant Services Corporation, by assignment from Wells Fargo Merchant Services, L.L.C.	Qty. Terminal Description	Qty. Printer Description	Qty. PinPad Description
	0	0	0
	0	0	0
	0	0	0
Total monthly lease: \$0.00 w/o Tax Lease Term: 0 Months			

Entitlement Option: **This is a non-cancelable lease for the full term indicated.**

CVV2/CVC2 Prompted on Hand Key, AVS, PCard Level II, Clientline

Have you previously had an American Express SE Number? Yes No

Does your business/organization participate in internet gambling or wagering? Yes No

Legal Disclosures

Important Information about Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask for your driver's license or other identifying documents.

Important Notice: You agree, in order for us to service the Account or to collect any amounts you owe, we may from time to time make calls and/or send text messages to you at any telephone number(s) associated with your Account, including wireless telephone numbers that could result in charges to you. The manner in which these calls or text messages are made to you may include, but is not limited to, the use of prerecorded/artificial voice messages and/or an automatic telephone dialing system. You further agree that, in order for us to service the Account or to collect any amounts you owe, we may send e-mails to you at any e-mail address you provide to us.

The signer(s) to this Merchant Processing Application (the "Application") hereby warrants and represents that it is authorized to complete the Application and provide the authorizations and consents set forth herein, and that the statements made in this Application are true and complete. Each such signer(s) on behalf of him or herself and on behalf of the entity listed on this Application ("Applicant") at Wells Fargo Bank, N.A. and Wells Fargo Merchant Services, L.L.C. (collectively, "Wells Fargo") and/or its agent(s) to investigate the individual and business history of Applicant and each representative signing the Application, including obtaining consumer and business credit reports, in order to evaluate Applicant's acceptability into the merchant program and providing such credit information to Wells Fargo as needed for such purpose. If the Application is approved, Applicant also authorizes Wells Fargo to obtain subsequent consumer and business credit reports in connection with the maintenance, updating, renewal or extension of the Agreement. Applicant agrees to immediately notify Wells Fargo of any material changes in information provided in or in connection with this Application. Applicant and each signer to this Application agree that all business references contacted in connection with this Application, including financial institutions, may release any and all credit and financial information to Wells Fargo, and such information and any other information provided by Applicant or in connection with this Application, may be shared with Wells Fargo's affiliates. Applicant acknowledges having received and reviewed a copy of the Wells Fargo Privacy Policy for Business Principals, which includes a form for Applicant to communicate its privacy and solicitation preferences to Wells Fargo. Any unilateral alteration or modification made by Applicant or its representatives to the text of this Application shall be of no legal effect and at Wells Fargo's discretion may render this Application invalid. Applicant acknowledges that acceptance into Wells Fargo's merchant program is subject to final evaluation and approval by Wells Fargo in its sole discretion.

Applicant acknowledges having received and reviewed a copy of the attached Program Guide, the provisions of which are incorporated herein by reference. Applicant understands and acknowledges that upon the expiration of three (3) calendar days from the date below or after Applicant submits to Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank, N.A. (collectively "Wells Fargo") its first deposit for settlement, whichever comes first, (the "Rescission Period") Applicant will be bound by all provisions set forth in the Program Guide as it may be amended from time to time, unless Applicant notifies Wells Fargo in writing otherwise within the Rescission Period. Applicant further acknowledges and understands that it has an obligation to promptly contact Wells Fargo regarding any questions pertaining to any provision of the Program Guide, and that after the Rescission Period, it will be subject to any applicable early termination fees. Applicant further agrees that Applicant will not accept more than 30% of its card transactions via mail, telephone or Internet or

However, if your Application is approved based upon contrary information stated in the "Tell Us About Your Business" section above, you are authorized to accept transactions in accordance with the percentages indicated in that section. This Merchant Application Confirmation Acknowledgment and Signature Page also serves as a signature page to the Equipment Lease Agreement in Section 32 of the Program Guide, if the Applicant is requesting a lease of equipment described in such Section 32. The undersigned Applicant is the "Lessee" for the purposes of such Equipment Lease Agreement. Wells Fargo intends to assign the lease to First Data Merchant Services Corporation after execution of the Agreement. If the Application is approved, each of the undersigned also authorizes us to obtain subsequent consumer and business credit reports in connection with the maintenance, updating, renewal or extension of the Agreement. Each of the undersigned further agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit and financial information to us.

By signing electronically, Applicant and each individual signing this Merchant Processing Application and Agreement consent to the use of electronic signatures and records in connection with this Application and Agreement, the Personal Guaranty, and all related communications and agreements.

If you have chosen to accept American Express

"By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which is bound by the American Express® Card Acceptance Agreement ("Amex Agreement"), and that all information provided herein is true, complete, and accurate. I authorize Wells Fargo and American Express Travel Related Services Company, Inc. ("AXP" and AXP's agents) and Affiliates to verify the information in this application and receive and exchange information about me personally, including requesting reports from consumer reporting agencies, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct Wells Fargo and AXP agents and Affiliates to inform me directly or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information includes the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes.

I understand that upon AXP's approval of the application, the entity will be sent the Amex Agreement and materials which will be required for enrollment in AXP's program for Wells Fargo to perform services for AXP or in AXP's standard Card acceptance program which has different terms (e.g. different speeds of pay). I understand that if the entity does not qualify for the Wells Fargo servicing program which may be enrolled in AXP's standard Card acceptance program, and the entity may terminate the Amex Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity is bound by the Amex Agreement."

The Personal Guaranty section only applies if signed below.

Personal Guaranty - Signature Required

Each signer below ("You" or "Your") agrees as follows. You, in Your individual capacity (even though You use a title or other designation with Your signature) jointly, severally and unconditionally guarantee and promise to pay to Wells Fargo all indebtedness of the Applicant at any time arising under or relating to the Agreement, including the related application and any related agreements or instruments, and any First Data Lease if applicable as well as any extensions, modifications, or renewals thereof. You authorize Wells Fargo and/or its agent(s) to investigate the individual business history of Applicant and each representative signing the Agreement, including Yourself, including using credit reports, in order to evaluate acceptability in to the Wells Fargo Merchant Services Merchant Program and if necessary to conduct further investigations from time to time thereafter and to report credit information to other.

As guarantor, You waive (i) presentment, demand, protest, notice of protest, and notice of nonpayment; (ii) any defense arising from any defense of the Applicant or other guarantor; and (iii) the right to require Wells Fargo to proceed against Applicant or any other guarantor, to pursue any remedy in connection with the guaranteed indebtedness, or to notify You as guarantor of any conditions or changes in the indebtedness incurred by the Applicant, or of any changes in the Applicant's financial condition. You also authorize Wells Fargo without notice or consent, to (a) extend, modify, compromise, accelerate, renew, or otherwise change the terms of the guaranteed indebtedness; (b) proceed against one or more guarantors without proceeding against the Applicant or another guarantor; (c) release or substitute the indebtedness or this guaranty; and (d) any other defense of surety or guarantor.

You represent and warrant to Wells Fargo that: (a) Wells Fargo has made no representation to You as to the creditworthiness of Applicant; and (b) You have established adequate means of obtaining from the Applicant on a continuing basis financial and other information pertaining to Applicant's financial condition. You agree to keep adequately informed from such means of all facts, circumstances which might in any way affect Your risks hereunder, and You further agree that Wells Fargo shall have no obligation to disclose to You any information or material about the Applicant which is acquired by Wells Fargo in any manner.

You acknowledge and agree that until all obligations subject to this guaranty shall have been paid in full, You shall have no right of subrogation, and You waive any right to enforce any remedy which Wells Fargo now has or may hereafter have against the Applicant or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Wells Fargo. You agree that this guaranty will be governed by California law; and shall benefit Wells Fargo and its successors and assigns.

Principal Name: Stephanie SchardinClarke

Signature: _____, an individual

Date: _____

Principal Name: _____

Signature: _____, an individual

Date: _____

Principal Name: _____

Signature: _____, an individual

Date: _____

Principal Name: _____

Signature: _____, an individual

Date: _____

Wells Fargo Merchant Services, L.L.C.- (WFMS - Pricing Terms)

STATE OF NEW MEXICO RFP / 227965047995

Proposal Date: 09/17/13

Relationship Manager: Anne Ender

Assumptions	
Credit Card Volume	\$122,725,502
Average Transaction Size	\$71
Number of Locations	87
Anticipated Interchange Levels	Public Sector: 032 020/038 Emerging Markets: 013 011/038
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
Communications Method	line charges quoted separately Frame Relay / Dial / IPN
Gateway	PayPal Payflow Pro / Authorize.net
Pricing Option	Interchange + Assessments + Authorizations

Credit Card Processing Fees ¹
Interchange Plus the Following Fees:

\$0.045 On each Authorization/EDC attempt (as defined below)³

PIN Debit & Electronic Benefits Transfer (EBT) Processing Fees
 \$0.20 Per PIN Debit Transaction (applies to completed and declined transactions)
 EBT NOT ENTITLED

Applicable PIN Debit Network, Switch, Service and Administrative fees are passed through on all PIN Debit transactions (completed and declined). Applicable PIN Debit Network Interchange fees are passed through on completed PIN Debit transactions only.

American Express® - See table below for American Express Pass-Through Fees and footnote 1 for any applicable Credit Card Processing Fees

Applicable Fee Schedules: ¹⁵

Payment Networks Qualification Matrix <https://www.wellsfargo.com/biz/creditinterchangeplus>

Payment Networks Pass-Through Fees <https://www.wellsfargo.com/biz/merchantpassthroughfees>

Wells Fargo Fixed Acquirer Network Fee for Visa® Accepting Merchants <https://www.wellsfargo.com/visanetworkfee>

PIN Debit Networks Fee Schedule (if applicable) <https://www.wellsfargo.com/biz/merchantdebitfees>

Fee schedules are updated periodically. To obtain the current applicable fee schedules, please refer to the URLs above for more information. If you do not have internet access, please contact your Merchant Card Representative and request that a copy of the applicable fee schedules be mailed or faxed to you.

As noted in your Merchant Agreement, Payment Networks change their rates/fees from time to time. They are likely to revise rates/fees on 10/18/2013. To learn more about impacts to fee schedules resulting from Payment Network changes, please visit the URLs above or request an updated schedule.

Other Processing Fees

Set-Up Fee	\$	-	one time fee per location
Monthly Minimum Processing Fee ¹⁴	\$	-	per month
Chargeback Fee ²	\$	15.00	per chargeback
Monthly Service Fee (per location)	\$	20.00	per month
Statement Billing Fee (Paper Statement) ⁸	\$	-	per month
ACH Reject Fee	\$	10.00	per reject
Voice Authorization Fee	\$	0.75	per attempt
Annual Fee	\$	-	per location
Authorization/EDC Fee - Visa (Credit and Non-PIN Debit) ³	\$	0.045	per attempt
Authorization/EDC Fee - MasterCard® (Credit and Non-PIN Debit) ³	\$	0.045	per attempt
Authorization/EDC Fee - Discover® Network Card (Credit and Non-PIN Debit) ^{3,6}	\$	0.045	per attempt
Authorization/EDC Fee - American Express OnePoint® (Credit) ^{3,10}	\$	N/A	per attempt
Interchange Clearing Fee ¹⁸			
Applies to Visa, MasterCard, Discover Network Card (Credit and Non-PIN Debit)		N/A	on gross sales volume
Electronic Address Verification Service Fee	\$	0.01	per attempt
Voice (Manual) Address Verification Fee	\$	2.00	per attempt
Annual Compliance Support Fee ⁵	\$	-	per location
PCI Compliance Service Program Fee ¹³	\$	-	per month, per location
Non-validation PCI Compliance Fee ¹³	\$	-	per month, per location
Foreign Handling Fee (on Visa/MasterCard foreign card transactions)		0.10%	on foreign card sales

Merchant Initials



Wells Fargo Merchant Services, L.L.C.- (WFMS - Pricing Terms)

STATE OF NEW MEXICO RFP / 227965047995

Proposal Date: 09/17/13

Relationship Manager: Anne Ender

Assumptions	
Credit Card Volume	\$122,725,502
Average Transaction Size	\$71
Number of Locations	87
Anticipated Interchange Levels	Public Sector: 032 020/038 Emerging Markets: 013 011/038
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
Communications Method	Frame Relay / Dial / IPN
Gateway	PayPal Payflow Pro / Authorize.net
Pricing Option	Interchange + Assessments + Authorizations

Other Processing Fees Continued

Non Bank Card Authorization ⁷ Applies only to American Express (ESA/EDC), Discover EDC (Discover EDC not applicable on Discover Network Card Sales)	\$ 0.09 per attempt
Non Bank Card Capture Fee Applies only to American Express (ESA/EDC), American Express - split dial, Discover EDC (Discover EDC not applicable on Discover Network Card Sales)	\$ 0.03 per attempt
Terminal Reprogramming Fee (Terminal) - Applies to Customer Owned Terminals Only	\$ 75.00 per unit
Terminal Reprogramming Fee - Integrated Terminal - Applies to Customer Owned Integrated Terminals Only	\$ 150.00 per unit
Security Swap Fee for PIN Debit - Applies to Customer Owned PIN Pads Only	\$ 75.00 per unit
Card Imprinter Option	no imprinter
Rush Shipping Option	N/A

American Express Pass-Through Fees⁹

Industry Type	N/A
American Express Discount Rate ^{11,17}	N/A on Gross American Express sales
American Express Transaction Fee	N/A per transaction on Gross American Express sales
American Express Prepaid Discount Rate ^{11,17}	N/A sales
American Express Prepaid Transaction Fee	N/A per transaction
American Express Monthly ESA Processing Fee (per location) ¹²	N/A per month
American Express CAPN Non-Compliance Transaction Fee (if applicable) ¹⁸	N/A per transaction

1) The Credit Card Processing Fees will apply to American Express OnePoint Clients that are priced using the Interchange + Assessments + Authorizations; Interchange + Assessments + Rate + Authorizations; Interchange + Assessments + Authorizations + Debit (PIN and Non-PIN); and Interchange + Assessments + Rate + Authorizations + Debit (PIN and Non-PIN) pricing methods. "Discover Network Cards" as used herein refers to the authorization, processing and settlement of Discover Network Cards. "Discover EDC" as used herein refers to the use of our services for authorization and/or capture of Discover Network Cards only.

2) Client acknowledges and understands that an authorization only indicates the availability of the Cardholder's credit at the time the authorization is requested. It does not warrant that the person presenting the card is the rightful Cardholder, nor is it an unconditional promise or guarantee that Client will not be subject to a chargeback or debit.

3) Authorization/EDC Fee applies to all Visa, MasterCard, Discover Network Card and American Express OnePoint approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries, batch entry transactions and includes any transaction fees and capture fees.

5) The Annual Compliance Support Fee will be assessed and deducted from Client's Settlement Account at each anniversary date after the effective date.

6) Discover Authorization/EDC Fee applies to Clients that process transactions using Discover Network Cards.

7) Non Bank Card Authorization Fee applies to all approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries and batch entry transactions.

8) The monthly Statement Billing Fee can be waived if Client elects to access the monthly statement online instead of receiving a paper copy by mail. After Business Track access has been activated, please contact Customer Service at 1-800-451-5817 to request that paper statements no longer be mailed. If Business Track access is terminated by Client or as a result of inactivity, paper statements will be reinstated with the applicable monthly Statement Billing Fee. Enroll anytime at businesstrack.com.

9) American Express Processing Fees are listed separately in the American Express Pass-Through Fees table and will be billed as separate line items. These fees are defined according to American Express criteria as set by industry type (MCC). Changes to the American Express Discount Rate are at the discretion of American Express, including changes to industry type criteria based on MCC. "American Express OnePoint" refers to the authorization, processing and settlement of American Express Cards. "American Express (ESA/EDC) and Split Dial" refer to the use of our services for authorization and/or capture of American Express Cards only.

10) American Express OnePoint Authorization/EDC Fee applies to Clients that process transactions using American Express OnePoint.

11) Retail, Restaurant, and Travel Agency/Tour Operator Clients processing under the American Express OnePoint Program or the American Express ESA Program, using either a Credit or Prepaid Card, will be charged a 0.30% downgrade fee whenever a Card Not Present transaction occurs.

Merchant Initials 

Wells Fargo Merchant Services, L.L.C.- (WFMS - Pricing Terms)

STATE OF NEW MEXICO RFP / 227965047995

Proposal Date: 09/17/13

Relationship Manager: Anne Ender

Assumptions	
Credit Card Volume	\$122,725,502
Average Transaction Size	\$71
Number of Locations	87
Anticipated Interchange Levels	Public Sector: 032 020/038 Emerging Markets: 013 011/038
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
Communications Method	Frame Relay / Dial / IPN
Gateway	PayPal Payflow Pro / Authorize.net
Pricing Option	Interchange + Assessments + Authorizations

Wells Fargo Merchant Services, L.L.C.- (WFMS - Pricing Terms)

STATE OF NEW MEXICO RFP / 227965047995

Proposal Date: 09/17/13

Relationship Manager: Anne Ender

Assumptions	
Credit Card Volume	\$122,725,502
Average Transaction Size	\$71
Number of Locations	87
Anticipated Interchange Levels	Public Sector: 032 020/038 Emerging Markets: 013 011/038
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
Communications Method	Frame Relay / Dial / IPN
Gateway	PayPal Payflow Pro / Authorize.net
Pricing Option	Interchange + Assessments + Authorizations

12) Client will be charged the Monthly Processing Fee if Client meets the monthly processing fee criteria set forth by the American Express ESA Program. Should Client no longer meet the monthly processing fee criteria, American Express shall automatically adjust Client's pricing to the applicable industry discount rate and transaction fee (if applicable). Client will only be charged by American Express:

(1) the monthly processing fee; or (2) the applicable industry discount rate; or (3) the applicable industry discount rate and transaction fee.

13) The monthly PCI Compliance Service Program Fee and Non-validation PCI Compliance Fee are part of the mandatory PCI Compliance Service Program. These fees apply to Level 4 Clients who utilize a gateway or value added reseller (VAR). The program includes access to TrustKeeper, a Trustwave PCI Compliance solution to help Client comply with the Payment Card Industry Data Security Standards (PCI DSS) requirements. Clients are required to register and complete a PCI DSS certification process by visiting <https://pci.trustwave.com/wellsfargo>. If Client does not comply or fails the PCI DSS certification process, Client will be charged a monthly Non-validation PCI Compliance Fee until the account becomes compliant.

14) If the total discount fee for Visa, MasterCard and Discover Network Card transactions in a given month is less than the Monthly Minimum Processing Fee, then in addition to the total discount fee Client will be charged an amount equal to the Monthly Minimum Processing Fee minus the total discount fee.

15) Dues, assessments and pass-through fees are disclosed in the schedules referenced under the "Applicable Fee Schedules" section and the related footnote.

16) The American Express CAPN Non-Compliance Transaction Fee is determined solely by American Express and is applicable, but not limited to, an electronic authorization that is not obtained at the time of sale or a Client using a non-compliant POS device.

17) For Clients processing under the American Express OnePoint Program or the American Express ESA Program, using either a Credit or Prepaid Card, an Inbound Fee of 0.40% will be applied to any transaction using an American Express Card issued by an issuer located outside of the United States. This fee will not apply to Clients in the Education industry within the following categories: Sporting & Recreation Camps (MCC 7032), Elementary & Secondary Schools (MCC 8211), Colleges, Universities, Professional Schools (MCC 8220), and Child Care Services (MCC 8351).

18) The Interchange Clearing Fee (ICF) will be charged on transactions that may be considered higher risk and/or are processed at a higher expense level. These types of transactions can be identified on Client's Payment Networks Qualification Matrix by looking at the "ICF applies" column. If the interchange program level has been identified by a "YES" in this column, then the ICF will apply to that type of transaction.

If Client has selected to accept TeleCheck Services, see Part III - Section 1 of the Program Guide for the terms and conditions. If applicable, the Additional Services page will contain the fees and rates billed to Client by TeleCheck.

If Client does not follow proper authorization procedures, a \$50 chargeback handling fee will be assessed on MasterCard transactions.

American Express may charge Client an excessive disputes fee in the amount of \$5 for each Disputed Charge if Client is in American Express' Immediate Chargeback Program or \$15 for each Disputed Charge if Client is not in the Immediate Chargeback Program.

Client is responsible for any charges assessed by outside third parties that are not disclosed on the proposal. To the extent that this pricing proposal includes pricing for third party products and services, WFMS disclaims legal liability and responsibility for said products and services. Client's agreement with the third party provider shall govern Client's relationship with the third party provider. In the event that WFMS is billed for the third party's services, Client will reimburse WFMS for such services.

Client acknowledges and understands that WFMS shall have no responsibility or liability for any third party hardware or software procured and used by Client. To the extent Client has any issues, concerns or liability related to such hardware or software, Client must deal directly with the third party provider from whom Client procured the hardware or software. In no event will WFMS be responsible for any indirect, incidental or consequential damages that Client may incur as a result of using any third party hardware or software.

WFMS' proposal and associated pricing is based on the information provided. Any difference to our stated understanding may affect the proposed pricing. Without a signed agreement, this proposal expires 60 days from the proposal date stated above.

See Section 40.3 of the Program Guide for early termination fees.

Rounding. In the event the amount being billed to Client for any line item on this pricing proposal includes a total ending in less than a full cent, WFMS will either round such amount up or down to the nearest cent.

Fees for supplies, shipping, handling, and applicable sales tax may apply and are subject to change without notice. Additional information is available upon request.

Merchant Initials




Wells Fargo Merchant Services, L.L.C. - (WFMS - Pricing Terms)
STATE OF NEW MEXICO RFP / 227965047995
 Proposal Date: 09/17/13
 Relationship Manager: Anne Ender

Assumptions	
Credit Card Volume	\$122,725,502
Average Transaction Size	\$71
Number of Locations	87
Anticipated Interchange Levels	Public Sector: 032 020/038 Emerging Markets: 013 011/038
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
Communications Method	Frame Relay / Dial / IPN
Gateway	PayPal Payflow Pro / Authorize.net
Pricing Option	Interchange + Assessments + Authorizations

Additional Notes:	
<u>MCC Code</u>	<u>MCC Description</u>
9399	GOVERNMENT SERVICES, NOT ELSEWHERE
8299	SCHOOLS & EDUCATIONAL SVCS
9311	TAX PAYMENTS
<p>I ACKNOWLEDGE THAT I SIMULTANEOUSLY HEREWITH HAVE RECEIVED AND REVIEWED PROGRAM GUIDE WFB1601 AND AGREE TO THE TERMS THEREIN.</p> <p>Merchant Initials: _____</p>	


Processing Solutions			
Type	Quantity	Financing Method	Total w/o TAX

Merchant Signature: 

Date: 10/16/13

Print Name: Stephanie Schardin Clarke

Wells Fargo Merchant Services, L.L.C., and Wells Fargo Bank, N.A. ("WFMS")

By: 

Title: Senior Vice President Relationship Management

Print Name: Tracy Seng

Date: 10/11/13

AMENDMENT TO WELLS FARGO MERCHANT AGREEMENT

This Amendment (the "Amendment") to the Merchant Agreement, which includes the Merchant Processing Application (2 pages) and the Program Guide Form WFBOPSG1601 (the "Program Guide"), each as amended from time to time (collectively, the "Agreement") is entered into on the last date signed below (the "Effective Date") between **Wells Fargo Merchant Services, L.L.C.**, with offices at 1307 Walt Whitman Road, Melville, NY 11747 and **Wells Fargo Bank, N.A.**, with offices at 1200 Montego Way, Walnut Creek, CA 94598 (collectively, "SERVICERS") and **State of New Mexico (acting through its State Board of Finance)**, with offices located at **181 Bataan Memorial Building, Santa Fe, NM 87505** (hereinafter referred to as "CLIENT").

WITNESSETH:

WHEREAS, SERVICERS and CLIENT have fully negotiated in good faith and agreed to revise and/or modify certain provisions of the Agreement, and now desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and benefits to be derived from the Agreement and this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, SERVICERS and CLIENT agree that the terms set forth below shall be incorporated into, and become a part of, the Agreement subject to the provisions of the Fiscal Agent Agreement ("FAA") to which these Amendment and Program Guide are attached as Exhibit B and the parties further agree to be legally bound by the following new terms and to amend the Agreement as follows:

1. Agreement is subject to provisions of the FAA – effective May 1, 2014. The term of the Agreement shall be co-terminus with the FAA.
2. All references to a Personal Guaranty in the Merchant Processing Application are deleted in their entirety and CLIENT shall not be required to personally guarantee any of its obligations under the Agreement.
3. SERVICERS agrees that it will not utilize the personal credit bureau reports of the officers, directors, employees or agents of CLIENT to evaluate the CLIENT'S Application for merchant processing services.
4. Notwithstanding anything to the contrary in this Agreement, all references to Electronic Benefits Transfers (EBT) and TeleCheck are deleted in their entirety.
5. Parts II.B.26.11 (Merchants in the Lodging Industry) and II.B.30.6 (Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants) are deleted in their entirety.
6. The following item is added to the end of Part II.B.26.8 (Certain Rules and Requirements): "CLIENT can impose a convenience fee if CLIENT follows all the Association rules."
7. The second sentence of Part II.B.29.3 (Compliance Audits) is deleted in its entirety and replaced with the following: "Furthermore, we retain the right to conduct an audit, at our expense, performed by us or a third party designated by us to verify your compliance, or that of your agents or Merchant Providers, with security procedures and these Operating Procedures."
8. In Part II.B.29.5 (Investigation), the second sentence is deleted in its entirety and replaced with the following: "Notwithstanding the foregoing, if required by the Card Organization, we will engage a forensic vendor approved by a Card Organization at our expense."
9. Parts II.B.29.8 (Noncompliance Fees) and II.B.29.9 (Costs) are deleted in their entirety.

10. Notwithstanding anything to the contrary in Part II.B.35.2 (Other Debits), we will invoice you for the items in the following bullet points, as amended below: 1, 9, 12, 13, 14, 15, 18, and 19 (all other items will be debited to your Settlement Account).
 - a. The last sentence in Part II.B.35.2 before the bullets is replaced with the following, "Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement. The following is a list of reasons for other debits:".
 - b. The first bullet is deleted in its entirety and replaced with the following, "Card Organization fees, charges, fines, penalties, registration fees, or other assessments."
 - c. The last bullet is deleted in its entirety and replaced with the following, "Costs or expenses associated with responding to any subpoena, garnishment, levy."
11. Part II.B.36.5 (Charges for Changes to Account Maintenance) is deleted in its entirety.
12. Part II.A.2 is deleted in its entirety and replaced with the following: "You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Association Rules. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern."
13. Notwithstanding anything to the contrary in this Agreement, we will invoice you for any fees for Services due to us. Chargebacks and adjustments will be debited to your Settlement Account.
14. The first sentence in Part II.A.5.1 is deleted in its entirety and replaced with the following, "You shall be charged fees for Services as shown on Exhibit C to the FAA. Any changes during the term must be made pursuant to the amendment provisions in the FAA."
15. Part II.A.5.6 is deleted in its entirety.
16. Part II.A.5.11 is deleted in its entirety and replaced with the following: "If you believe any adjustments should be made with respect your Settlement Account, you must notify us in writing within 90 days after any debit or credit is or should have been effected."
17. Part II.A.5.12 is deleted in its entirety.
18. Part II.A.7.2 is deleted in its entirety and replaced with the following, "THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, BY AND AS TO ANY GOODS PROVIDED BY A THIRD PARTY."
19. The last sentence in Part II.A.7.3 is deleted in its entirety.
20. Parts II.A.7.4 and II.A.7.5 are deleted in their entirety.
21. The last sentence of Part II.A.10.8 is deleted in its entirety and replaced with the following, "Inclusion on this list may impact future pricing and processing options."
22. Parts II.A.10.1, II.A.10.4.1, II.A.10.4.2, II.A.10.4.3, II.A.10.4.5, II.A.10.4.7, II.A.10.4.8, and II.A.10.4.10 are deleted in their entirety.
23. Part II.A.10.2 is deleted in its entirety and replaced with the following, "The term of this Agreement shall commence and shall be co-terminus with the FAA".

24. Part II.A.10.3 is deleted in its entirety and replaced with the following: "Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 90 days' advance notice to you. We may terminate this agreement immediately or with shorter notice upon event of Default as provided under Section 23.4. You may terminate this Agreement without penalty pursuant to the FAA."
25. Part II.A.10.4.6 is deleted in its entirety and replaced with the following, "you shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement; or"
26. Part II.A.10.6 is deleted in its entirety and replaced with the following, "If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law and this Agreement."
27. Part II.A.11 is deleted in its entirety and replaced with the following: "You agree to be liable for (i) all chargebacks, (ii) fines and assessments imposed by the Card Organization, including obligations for data compromise or failure to comply with Payment Card Industry Data Security Standards which may be referred to as Cardholder Information Security Program (CISP) or Site Data Protection (SDP) or Data Security Operating Policy (DSOP) in the Visa, MasterCard and Discover Operating Regulations and (iii) losses, liabilities, damages and willful misconduct, in conjunction with Card transactions or otherwise arising from your provision of goods and services to Cardholders. You agree to: (i) pay all fines and assessments within fifteen business days of notice of the amount is due and owing; and (ii) remain liable until the full amount of such fines and assessments are fully paid. Your failure or refusal to pay the amount will permit us to stop processing additional transactions or terminate this Agreement immediately without advance notice."
28. Parts II.A.12, II.A.13, II.A.24.2, II.A.25.1 and II.A.25.6 are deleted in their entirety.
29. **Part II.A.16.** So long as CLIENT does not engage in Electronic Benefit Transfer (EBT) transactions, Part II.A.16 of the Agreement will not apply to you.
30. Parts II.A.17, II.A.18, and Part III.3.0 are deleted in their entirety. Any merchant equipment or wireless services to be purchased or leased by the Agency requesting these services shall be paid for by that Agency pursuant to a separate agreement between that Agency and the party providing that equipment or service.
31. **Choice of Law.** Part II.A.24.1 is deleted in its entirety and replaced with the following: "Our Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico (without regard to its choice of law provisions)."
32. Notwithstanding anything to the contrary in Part II.A.25.7, amendments are subject to the amendment provisions of the FAA.
33. Part III.1.0. So long as you do not subscribe to the TeleCheck services, Part III.1.0 of the Agreement will not apply to you.
34. **Early Termination Fee.** Notwithstanding anything to the contrary provided in Part II.B.40.3, the parties agree that CLIENT shall not be obligated to pay any early termination penalties upon termination of the Agreement.
35. Part II.B.40.3, item #b ("The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client, and") and item #c (beginning

with "Increases in any applicable sales or telecommunication charges or taxes ..." are deleted in their entirety.

36. The eighth paragraph in Part II.B.40.3 (beginning with "A Monthly Minimum Processing Fee will be calculated") is deleted in its entirety.
37. The Duplicate Confirmation Page is deleted in its entirety.
38. In the Confirmation Page, the second paragraph and items #1 through #10 are deleted in their entirety.
39. All other provisions of the Agreement shall remain unchanged and in full force and effect.

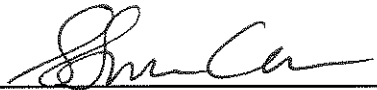
This Amendment may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one instrument. This Amendment may be executed and delivered by facsimile and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile signatures as evidence of the execution and delivery of this Amendment by all parties to the same extent that an original signature could be used.

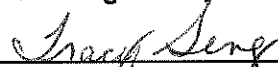
Except as set forth herein, the terms and conditions of the Agreement shall remain in full force and effect; provided however, that if any term or condition of the Agreement conflicts with or is inconsistent with any term or condition of this Amendment, the terms and conditions of this Amendment shall govern, prevail, and control. All references to the Agreement shall include this Amendment. This Amendment shall be governed by and construed in accordance with the laws of the State of New Mexico, without giving effect to principles of conflicts of law.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment as of the _____ day of _____, 2014.

State of New Mexico

**Wells Fargo Merchant Services, L.L.C.
and Wells Fargo Bank, N.A.**

By: 

By: 

Title: Director

Title: SVP Relationship Management

Print Name: Stephanie Schardin Clarke

Print Name: Tracy Seag

Date: 10/16/13

Date: 10/11/13



**WELLS
FARGO**

Merchant Services

Program Guide

Together we'll go far



PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to make purchases at your establishment, and helps speed payment to your account.

These Program Terms and Conditions (the "Program Guide") presents terms governing the acceptance of Visa®, MasterCard® and Discover® Credit Card and Non-PIN Debit Card payments. This Program Guide also includes provisions applicable to American Express® and Non-Bank Services. References to American Express in this Program Guide are referred to in the American Express OnePoint Program, unless otherwise indicated. Your Merchant Processing Application will indicate the types of payments and Services you have initially elected to accept.

This Program Guide, together with your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), including, without limitation, the Interchange Qualification Matrix and one of the following Interchange Schedules, as applicable to your pricing method as set forth in the Merchant Processing Application, contains the terms and conditions under which Processor and/or Bank and/or other third parties, such as TeleCheck for check services, will provide services to you. We will not accept any alterations or strike-outs to the Program Guide and, if made, any such alterations or strike-outs shall not apply. Please read this booklet completely as it contains important information.

IMPORTANT INFORMATION ABOUT BANK'S RESPONSIBILITIES:

The provisions of this Agreement regarding Discover Card Transactions, American Express Card Transactions and Non-Bank Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Card Transactions, American Express Card Transactions and Non-Bank Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Card Transactions, American Express Card Transactions and Non-Bank Services.

OTHER IMPORTANT INFORMATION:

Credit Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Credit Cards, you should be aware that you are also accepting these risks.

Visa U.S.A, Inc. ("Visa") and MasterCard Worldwide ("MasterCard"), Discover Financial Services LLC ("Discover") and American Express Company, Inc. ("American Express") are payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. Sales Drafts are electronically transferred from banks (in the case of Visa and MasterCard transactions) or network Acquirers (in the case of Discover transactions) that acquire them from merchants such as yourself (these banks and network acquirers are referred to as "Acquirers") through the appropriate Card Organization, to the Issuers. These Issuers then bill their Cardholders for the transactions. The Card Organizations charge the Acquirers interchange fees and assessments for submitting transactions into their systems. A substantial portion of the Discount Rate or Transaction Fees that you pay will go toward these fees and assessments.

In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments.

Each Card Organization has developed Card Organizations Rules that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules. The Card Organization Rules and applicable laws give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant, including Chargeback rights.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Credit Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for capitalized terms used in the Agreement, including this Preface (if not defined above).

Program Guide

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Please read the Merchant Processing Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement (which includes your Merchant Processing Application, the foregoing Program Guide, and the schedules thereto and documents incorporated herein) with Bank and/or Processor. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your fees for certain Services** set forth in this Agreement are based on the interchange rates set by the Card Organization. Any transactions that fail to qualify at your Anticipated Interchange Levels will be charged an additional fee (See Section 5 of the Merchant Processing Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons** why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 35 of the Merchant Processing Program Guide.
4. **If you dispute any charge or funding**, you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability, see Section 7 of the Card General Terms.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card General Terms in 10, Term; Events of Default and Section 11, Reserve Account; Security Interest), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you may be responsible for the payment of an early termination fee as set forth in Section 40.3 under "Additional Important Information."
9. **If you lease equipment from Processor**, it is important that you review Section 3.0 in Third Party Agreements. Bank is not a party to this Agreement. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**
10. **Third Party Services.** To the extent you have elected to obtain any third party services package, please ensure that you review and understand the terms and conditions contained in Part III (Third Party Agreements) relevant to such third party services.

11. Card Organization Disclosure

Member Bank Information: Wells Fargo Bank

The Bank's mailing address is Wells Fargo Bank, 1200 Montego, Walnut Creek, CA 94598 and its phone number is 1-800-451-5817.

Important Member Bank Responsibilities:

- a) The Bank is the only entity approved to extend acceptance of Card Organization products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: http://usa.visa.com/merchants/operations/op_regulations.html.
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules/html>.

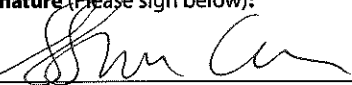
Print Client's IRS Legal Filing Name: State of New Mexico

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1601 REV 4/3/13) consisting of 59 pages (including this confirmation), which is incorporated into its Agreement, and agrees to comply with all terms set forth therein. Upon receipt of a signed original of this Confirmation Page by us, your Application for merchant processing services will be reviewed. Client understands that its Application is subject to approval by us. Client understands that a copy of the Program Guide is also available for downloading from the internet at:

www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf

CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):

X 

Stephanie Schardin Clarke

Please Print Name of Signer

Director, Board of Finance 10/9/13

Title

Date

Please read the Merchant Processing Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

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2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons** why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 35 of the Merchant Processing Program Guide.
4. **If you dispute any charge or funding**, you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability, see Section 7 of the Card General Terms.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card General Terms in 10, Term; Events of Default and Section 11, Reserve Account; Security Interest), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you may be responsible for the payment of an early termination fee as set forth in Section 40.3 under "Additional Important Information."
9. **If you lease equipment from Processor**, it is important that you review Section 3.0 in Third-Party Agreements. Bank is not a party to this Agreement. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**
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- a) The Bank is the only entity approved to extend acceptance of Card Organization products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: http://usa.visa.com/merchants/operations/op_regulations.html.
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules/html>.

Print Client's IRS Legal Filing Name: _____

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1601 REV 4/3/13) consisting of 59 pages (including this confirmation), which is incorporated into its Agreement, and agrees to comply with all terms set forth therein. Upon receipt of a signed original of this Confirmation Page by us, your Application for merchant processing services will be reviewed. Client understands that its Application is subject to approval by us. Client understands that a copy of the Program Guide is also available for downloading from the internet at:

www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf

CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):

X _____

_____ Title

_____ Date

Please Print Name of Signer

PART II: CARD SERVICES

A. CARD GENERAL TERMS

1. Services

Subject to Card Organization Rules, Services may be performed by us or our agents, including, without limitation, our respective Affiliates, including the provision of terminals or other equipment and local support functions in connection with this Agreement.

2. Operating Procedures; Card Organization Rules and Compliance

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including, without limitation, the data security requirements described in Section 29. From time to time, we may amend the Operating Procedures, by providing you with at least twenty (20) days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the card Organization Rules. Card Organization Rules may be available on the web sites such as

http://usa.visa.com/merchants/operations/op_regulations.html and <http://mastercardmerchant.com>. These links may change from time to time.

3. Settlement of Card Transactions

3.1. We will only be required to settle Card transactions for Card types specified in your Application. Promptly after presentation of Sales Drafts pursuant to the Operating Procedures, we will initiate a transfer of the applicable settlement funds to you.

3.2. Unless otherwise agreed to in writing to the contrary, all discount rates are deducted daily. All settlements for Visa, MasterCard Discover and American Express Card transactions will be net of Credits, Summary Adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to any of our respective Affiliates, whether or not arising out of or related to this Agreement.

3.3. All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct fees, our final audit, Chargebacks (including our related losses), fees and fines imposed on us by the Card Organizations as a result of your acts or omissions. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

3.4. We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any other Person.

3.5. In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 10.4) occur, we may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

3.6. You acknowledge and agree that transfers to and from the Settlement Account shall be based on the account number and routing number supplied by you. We are not responsible for detecting errors in any Settlement Account information you provide, including the account numbers and routing numbers, even if any of those numbers do not correspond to the actual account or financial institution identified by name.

3.7. This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the U.S. bankruptcy code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement, without

regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

4. Exclusivity

During the term of this Agreement, you shall use us as your exclusive provider of all Services.

5. Fees; Adjustments; Collection of Amounts Due

5.1. In consideration of the Services provided by us, you shall be charged, and hereby agree to pay us any and all fees set forth in this Agreement (for purposes of clarity, this includes the Application and any additional pricing supplements or subsequent communications), all of which will be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements or subsequent communications.

If a transaction fails to qualify for your anticipated interchange levels or you inadvertently or intentionally accept a transaction other than anticipated for your account (including a different Card type), then, as applicable to your pricing method, you will be charged a higher interchange, Discount Rate or a Non-Qualified Interchange Fee, as well, any applicable surcharge for that transaction, all as further described in Section 40.3 of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for your account (including a different Card type), you will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as you would be if it was of a Card type elected and approved. For more information on Visa's and MasterCard's interchange rates, please go to www.visa.com and www.mastercard.com.

5.2. Should you have questions regarding any Non-Qualified fees (including Non-Qualified Interchange Fees or Non-Qualified Surcharge), submit a Non-Qualified Fee Inquiry (NFI) request in writing (either letter, fax or email) within 90 days from the mail date (post mark) of the monthly statement in question. Note that NFI requests received after the 90 day limit may not be considered for refund review. The subject line or reference at the top of your NFI request must state "Non-Qualified Fee Inquiry." Your NFI request must include your merchant name, merchant number, billing address, and the month of the processing statement on which the non-qualified fees appeared. When possible, also include a copy of the statement on which the fees in question appear. Written fee inquiries should be submitted by email to nfirequest@wellsfargomERCHANTservicesllc.com; via fax to (954) 509-1822; or if mailed, sent to: Wells Fargo Merchant, Services, LLC, P.O. Box 6699, Hagerstown, MD 21740, Attn: NFI Investigations Unit.

We will provide a written response to your NFI with an explanation. If through our research, we find that a refund is due, we will credit your account within 30 days from the date our research was completed. NFI requests not received in accordance with the foregoing shall not be subject to the response times set forth in this Section.

5.3. All Authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement. If you are billed a combined fee for both the authorization and capture of a transaction, the authorization and capture must be submitted as a single transaction, otherwise the authorization and the capture will each be charged separately. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the indicated billing.

5.4. The fees for Services set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in this Agreement and your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your fees for Services without prior notice.

5.5. The fees for Services set forth in this Agreement may be adjusted to reflect increases or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by third parties related to the Services. All such adjustments shall be your responsibility to pay and shall

become effective upon the date any such change or addition is implemented by the applicable Card Organization or third party as specified in our notice to you.

5.6. Subject to Section 10.3, we may also increase our fees or add new fees for Services for any other reason at any time by notifying you twenty (20) days prior to the effective date of any such change or addition.

5.7. If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.

5.8. To the extent the Automated Clearing House (ACH) settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our respective Affiliates for any products or services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our respective Affiliates for any products or services have been paid in full.

5.9. You agree to pay any fines imposed on us by any Card Organization resulting from Chargebacks and any other fees or fines imposed by a Card Organization with respect to your acts or omissions. You are responsible for any fines or fees imposed on us as a result of acts or omissions by your agents or third parties.

5.10. If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback Percentage, you shall, in addition to the chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback Percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback Percentages reported by Visa, MasterCard, American Express or Discover. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard, American Express and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard, American Express and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard, American Express and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard, American Express and Discover transactions in that line of business submitted in that month.

5.11. You must promptly and carefully review statements or reports provided or made available to you (physically, electronically or otherwise) reflecting Card transaction activity, including, activity in the Settlement Account and Reserve Account, whether provided by us or others. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is, or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after such time period, we shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

5.12. If you do not pay us all fees and any other amounts due under this Agreement within thirty (30) days of the date of our merchant statement or other statement setting forth the amount due, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of (i) the per annum rate equal to Bank's then current prime plus two percent (2%), based on a 360 day year, or (ii) the maximum rate permitted by applicable law.

6. Chargebacks

6.1. You shall be responsible for reimbursing us for all transactions you submit that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

6.2. You shall reimburse us for any Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us within the applicable time limits.

7. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages

7.1. Without limiting any other warranties hereunder, you represent warrant to and covenant with us, and with the submission of each sales Draft reaffirm, the following representations, warranties and/or covenants:

7.1.1. each Card transaction is genuine and arises from a bona fide transaction permissible under the Card Organization Rules by the Cardholder directly with you, represents a valid obligation for the amount shown on the Sales Draft, preauthorize order, or Credit Draft, and does not involve the use of a Card for any other purpose;

7.1.2. each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;

7.1.3. the amount charged for the Card transaction is not subject to any dispute, setoff or counterclaim;

7.1.4. each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented by you pursuant to your business as indicated on the Application and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon your accepting and submitting the Card transaction for processing;

7.1.5. with respect to each Card transaction, you have no knowledge or notice of any fact, circumstances or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectibility of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;

7.1.6. each Card transaction is made in accordance with these General Terms, Card Organization Rules and the Operating Procedures;

7.1.7. each Sales Draft is free of any alternation not authorized by the related Cardholder;

7.1.8. you have completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;

7.1.9. you are validly existing, in good standing and free to enter into this Agreement;

7.1.10. each statement made on the Application or other information provided to us in support of this Agreement is true and correct;

7.1.11. you are not doing business under a name or style not previously disclosed to us;

7.1.12. you have not changed the nature of your business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different merchant category code under Card Organization Rules, in a way not previously disclosed to us;

7.1.13. you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person;

7.1.14. you have not filed a bankruptcy petition not previously disclosed to us;

7.1.15. you own and control the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction.

7.1.16. you will not at any time during the term of this Agreement, or until all amounts due under this Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person without our consent;

7.1.17. the Card transaction is not a payment for a product or service that violates federal, state or local law in any jurisdiction that may be applicable.

7.2. THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

7.3. IN NO EVENT SHALL EITHER PARTY, OR THEIR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUB-CONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

7.4. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 13 OR 7.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

7.5. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 13), OUR LIABILITY TO ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 3.4, 3.6 OR 22.1, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK FROM TIME TO TIME.

7.6. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO YOU IN ANY WAY WITH RESPECT TO NON-BANK CARD SERVICES.

8. Confidentiality

8.1. Unless you obtain consents from us and each applicable Card Organization, Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

8.2. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a third party as an asset upon a bankruptcy, insolvency or failure of Client's business. Upon a bankruptcy, insolvency or failure of Client's business all Card transaction information must be returned to Servicers or acceptable proof of the destruction of all Card transaction information must be provided to Servicers.

8.3. You will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by us or our agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Servicers, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person and your agents and representatives, which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure

or (c) generally available to the public other than through any disclosure by or fault of you, your agents or representatives.

8.3.1. Our confidential information shall be used by you only to exercise your rights and to perform your obligations hereunder. Client shall receive our confidential information in confidence and not disclose the confidential information to any third party, except as may be agreed upon in writing by us. Client shall safeguard all of our confidential information using a reasonable degree of care, but not less than that degree of care used by it in safe guarding its own similar information or material. Upon request by us or upon termination of this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

8.3.2. The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of Client; (ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's possession prior to receipt from us; (iv) is required to be disclosed by law, regulation or court order after giving us as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Client's employees, consultants or agents without use of or reference to our confidential information.

8.3.3. Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

8.3.4. Client acknowledges that breach of the restrictions on use or disclosure of any of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

8.4. With respect to any information received by us from Client via its use of the Services, we will keep such information confidential in accordance with applicable law; provided, that we may disclose such information (i) to third parties as we deem appropriate to provide the Services, (ii) our auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by law, regulation or court order (iv) to our respective Affiliates as we deem appropriate.

8.5. You shall not assign to any Person, the rights to use the Marks of Servicers, our agents or the Card Organizations.

8.6. All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by us prior to, during the term of, or after the Agreement, or employed by us in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, our exclusive property.

8.7. Client agrees that we may obtain relevant information from any applicable telecommunications provider utilized by Client, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by Client in connection with the Services.

9. Assignments

9.1. Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 9, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

9.2. The payment services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Card transactions covered by this Agreement to the custody or control of any third party. You may not assign any rights, including the right of payment under this Agreement, to any other person. In the event that you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an

authorization to both initiate debits or credits to the bank account of the assignee, (b) terminate this Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

9.3. Another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules. Subject to Card Organization Rules, we may assign or transfer this Agreement and our rights and obligations hereunder and/or may delegate our duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

9.4. Except as set forth elsewhere in this Section and as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

10. Term; Events of Default

10.1. This Agreement shall become effective upon the date this Agreement is approved by our Credit Department.

10.2. The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall renew for successive one year terms unless and until you provide written notice at least ninety (90) days prior to the end of the then current term or we provide you with notice in accordance with the Agreement.

10.3. Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 20 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon Event of Default as provided under Section 10.4 of this Agreement. You may terminate this Agreement without penalty in the event of a material breach of this Agreement by Servicers. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 5.6, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, maintaining your merchant account or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.

10.4. If any of the following events shall occur (each an "Event of Default"):

10.4.1. a material adverse change in your business, financial condition or business prospects; or

10.4.2. any assignment or transfer of voting control of you or your parent; or

10.4.3. a sale of all or a substantial portion of your assets; or

10.4.4. irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, nonconformance with any applicable data security standards, as determined by Servicers, any Card Organization, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us (including your processing transactions for a business type we have designated as unqualified for processing with us); or

10.4.5. any of your representations, warranties or covenants in this Agreement are breached in any respect; or

10.4.6. you default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 11; or

10.4.7. you default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our respective Affiliates;

10.4.8. you default in the payment when due, of any material indebtedness for borrowed money; or

10.4.9. you file a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of you or of a substantial part of your property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or

10.4.10. your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or

10.4.11. a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 25.2 ("Compliance with Laws");

then, upon the occurrence of (1) an Event of Default specified in subsections 10.4.4, 10.4.9 or 10.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

10.5. Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us will survive termination of this Agreement until finally and irrevocably paid in full and settled.

10.6. If any Event of Default occurs and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law and this Agreement, including, without limitation, exercising our rights under Section 11.

10.7. In the event you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.

10.8. The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard or Discover. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

10.9. After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

11. Reserve Account; Security Interest

11.1. You expressly authorize us to establish a Reserve Account to help mitigate our risk exposure under this Agreement. The decision to establish a Reserve Account (and the amount thereof) lies exclusively with us, and you understand that you are obligated to fund such account pursuant to the terms and conditions set forth in this Section 11. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history (where applicable) and the potential risk of loss to us as we may determine from time to time.

11.2. The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud an Event of Default Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates; at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with our liability for your Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 11 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on funds held by us in a Reserve Account.

11.3. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

11.4.1. To secure your obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of equipment products or services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to us a first priority lien and security interest in and to (i) the Reserve Account and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us or any of our respective Affiliates for any related equipment or related services (including any check warranty and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

11.4.2. To the extent funds are held in a separate Reserve Account, the Reserve Account shall be subject to (i) Servicers' security interest pursuant to this subsection 11.4, and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the Reserve Account is held (such institution hereinafter referred to as "Settlement Account Bank") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Settlement Account Bank shall be a national bank which is mutually acceptable to you and Servicers.

11.4.3. For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off (collectively "Set Off Funds") any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement, you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled Reserve Account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

11.4.4. If in replacement of or in addition to the first priority lien and security interest in the Reserve Account, you grant to Servicers a first priority

lien and security interest in and to one or more certificates of deposit, the certificates of deposit shall be uncertificated and shall be subject to an Acknowledgement of Pledge of Certificate of Deposit and Control Agreement (the "Certificate of Deposit Control Agreement") by, between and among Customers, Servicers and the financial institution that has established and issued the certificate of deposit. The form of the Certificate of Deposit Control Agreement and the financial institution that will establish and issue the certificate of deposit shall be satisfactory and acceptable to Servicers.

12. Financial and Other Information

12.1. Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide, and/or cause to be provided, to us and our Affiliates, or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your or your Merchant Providers' facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate. In such event, you shall pay the costs incurred by us or our Affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations. Section 12.1 shall not be in force as long as you maintain a Commercial Lending relationship with Wells Fargo Bank, N.A. and Wells Fargo Bank, N.A. is permitted to disclose your financial statements to Wells Fargo Merchant Services upon request. In the event you terminate your Commercial Lending relationship with Wells Fargo Bank, N.A., you shall be obligated to satisfy the requirements of this Section 12.1

12.2. You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

13. Indemnification

13.1. You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses:

- resulting from an event of Default or any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement;
- arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders;
- arising out of your use of the Services; or
- arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer).

13.2. We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Non-Bank Services.

14. Special Provisions Regarding Non-Bank Cards

14.1. Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover, American Express, JCB, Voyager and WEX Card types. Services provided, transactions processed and other matters contemplated under this Section 14 are subject to the rest of the Agreement, as applicable, except to the extent the terms of this Section 14 directly conflict with another provision of this Agreement, in which case the terms of this Section 14 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the application for any non-acquired transaction services you receive from Processor. For the purposes of this section, the words "we," "our" and "us" refer

only to Processor and not to the Bank. You authorize us to share information from your Application with American Express, JCB (and Discover on its behalf), Discover, or any other Non-Bank Card Organization.

14.2. You understand that for American Express transactions, authorizations are obtained from and are funded by American Express. American Express will provide you with its own agreement that governs those transactions, unless American Express OnePoint Services are provided to you in Section 2.0 of Third Party Agreements. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

14.3. If you accept JCB Cards, you agree to be bound by JCB and/or Discover provisions of this Agreement. You also acknowledge and agree that JCB transactions will be processed under and will be subject to Discover Card Organization Rules.

14.4. If you accept Voyager and/or WEX Cards, you agree to be bound by the WEX and/or Voyager rules. You also agree to be bound by all other provisions of this Agreement which are applicable to WEX and/or Voyager.

14.5. If you execute a separate WEX Merchant Agreement, (WEX Non Full Service Program), you understand that we will provide such agreement to WEX, but that neither we nor WEX shall have any obligation whatsoever to you with respect to processing WEX Cards unless and until WEX executes your WEX Merchant Agreement. If WEX executes your WEX Merchant Agreement and you accept WEX Cards, you understand that WEX transactions are processed, authorized and funded by WEX. You understand that WEX is solely responsible for all agreements that govern WEX transactions and that we are not responsible and assume absolutely no liability with regard to any such agreements or WEX transactions, including but not limited to the funding and settlement of WEX transactions. You understand that WEX will charge additional fees for the services that it provides.

14.6. If you elect to participate in the WEX Full Service Program, the following terms and conditions shall apply:

- a. You shall provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX Cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services;
- b. All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data;
- c. You shall not submit a WEX Card sale for processing when a WEX Card is not presented at the time of the WEX Card sale;
- d. You shall complete a WEX Card sale only upon the receipt of an Authorization approval message and not accept a WEX Card when an expired Card/decline message is received;
- e. You shall not submit a WEX Card sale for processing until the goods have been delivered or services performed;
- f. You shall not accept a WEX Card where the WEX Card appears to be invalid or expired or there is reasonable belief that the WEX Card is counterfeit or stolen;
- g. You shall provide a copy of the receipt for a WEX Card sales, upon the request of the Card holder, to the extent permitted by applicable law, which shall not include the full account number or driver identification number;
- h. You shall require the Cardholder to sign a receipt when a WEX Card sale is not completed by an island Card reader;
- i. You shall take all commercially reasonable efforts to protect manual WEX Card sales data from fraud or misuse;
- j. You shall not divide the price of goods and services purchased in a single WEX Card sale among two or more sales receipts or permit a WEX Card sale when only partial payment is made by use of the WEX Card and the balance is made with another bank Card;
- k. You shall securely maintain a record of all WEX Card sales, including the Authorization Request Data, for a period of one year and produce such records upon the reasonable request of WEX;

- l. You shall notify Processor of any errors contained within a settlement report within forty five (45) days of receipt of such report. Processor will not accept reprocessing requests for WEX transactions older than 90 days;
- m. You shall allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service; and
- n. You shall retransmit WEX Card sales data when reasonably requested to do so.
- o. Client acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Processor for the WEX Full Acquiring Services and not WEX, except to the extent that WEX knows of any fraud related to the WEX Cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services.

14.7. If you accept Voyager Cards:

- In addition to the information stated in Section 26 (MasterCard, Visa and Discover Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under Section 26.5 (Special Terms) of the Operating Procedures, you shall establish a fair policy for the exchange and return of merchandise. You shall promptly submit Credits to us for any returns that are to be credited to a Voyager Card holder's account. Unless required by law, you shall not give any cash refunds to any Voyager Card holder in connection with a sale.
- In addition to the information required under Section 28.1 (Information Required) of the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:
 - Time of transaction.
 - Type of fuel sold.
 - As permitted by the applicable POS device, odometer reading.
 - For all cashier-assisted Sales Drafts and Credit Drafts processed manually using a card Imprinter if required, the identification number from the source credentials provided by Cardholder to validate Cardholder's identity (e.g., Driver's License number).
- If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.
- In addition to the information provided under Section 32 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of Chargebacks, tax exemptions, discounts, Credits, and the fees set forth in the Application. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) days from the date of purchase.
- For daily transmission of sales data, you shall securely maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media, if secure. You are responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenario identified in Section 35.1.4 of the Operating Guide that could cause an authorization related Chargeback to occur, with respect to Voyager transactions, Chargebacks shall be made in accordance with any other Voyager rules. Notwithstanding termination or expiration of this paragraph or the Agreement, you shall remain liable for all outstanding Chargebacks on Voyager transactions.
- In addition to the information provided under Section 7 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager Transaction Fees paid by you to us for the two months prior to the action giving rise to the claim.
- Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to

you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if an Card Organization discontinues its Card.

15. Special Provisions For PIN Debit Card

The special provisions outlined in this Section 15 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN.

15.1. PIN Debit Card Acceptance. Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the PIN Debit Card to determine if the Card participates in a network that you are authorized to accept. The Network mark(s) will usually be printed on the back of the Card. If the PIN Debit Card is valid and issued by a participating network, you must comply with the following general requirements for all participating networks, in addition to any specific requirements of the network.

- You must honor all valid PIN Debit Cards when presented that bear authorized network marks.
- You must treat transactions by Cardholders from all Issuers in the same manner.
- You may not establish a minimum or maximum transaction amount for PIN Debit Card acceptance.
- You may process cash back or store credit on PIN Debit Cards on a merchandise return according to your store policy.
- You may not require additional information, beside the Personal Identification Number, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for PIN Debit Card transactions.
- You shall not disclose transaction related information to any party other than your agent, a network, or issuing institution and then only for the purpose of settlement or error resolution.
- You may not process a Credit Card transaction in order to provide a refund on a PIN Debit Card transaction.

15.2. Transaction Processing. The following general requirements apply to all PIN Debit Card transactions.

- All debit transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- You may not complete a PIN Debit Card transaction that has not been authorized. The Cardholder should be instructed to contact the Issuer to find out why a transaction received a Referral or decline response. If you cannot obtain an authorization at the time of sale, you should request another form of payment from the customer or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuing Bank to find out why a transaction has been declined.
- You may not complete a PIN Debit Card transaction without entry of the Personal Identification Number (PIN) by the Cardholder.
- The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The PIN Debit Network used to process your transaction will depend upon, among other things, our own business considerations, the availability of the PIN Debit network at the time of the transaction and whether a particular PIN Debit Card is enabled for a particular PIN Debit network. The PIN Debit network utilized to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) utilize any PIN Debit network available to us for a given transaction (including a PIN Debit network affiliated with Processor) and (ii) add and/or remove PIN Debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.
- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the customer.
- Any applicable tax must be included in the total transaction amount for which authorization is requested. Tax may not be collected separately in cash.

- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

15.3. Cash Back From Purchase. You have the option of offering cash back to your customers when they make a PIN Debit Card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not now offering this service, your terminal may require additional programming to begin offering cash back.

15.4. Settlement. Within one Business Day of the original transaction, you must balance each location to the system for each Business Day that each location is open.

15.5. Adjustments. An adjustment is a transaction that is initiated to correct a PIN Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a Debit Card network. Some networks may have established minimum amounts for adjustments.

There are several reasons for adjustments being initiated:

- The Cardholder was charged an incorrect amount, either too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.
- All parties involved in processing adjustments are regulated by time frames that are specified in the operating rules of the applicable Debit Card network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

16. Special Provisions Regarding Electronic Benefit Transfer ("EBT")

If you elect to engage in EBT transactions, the terms and conditions of this Section 16 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 16 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 16 directly conflict with another section of this Agreement, in which case the terms of this Section 16 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

We offer electronic interfaces to EBT networks for the processing, settlement and switching of EBT transactions initiated through the use of a state-issued EBT card ("EBT Card") at your POS Terminal(s) for the provision of United States Department of Agriculture, Food and Nutrition Service ("FNS"), Supplemental Nutrition Assistance Program ("SNAP") and Women, Infants and Children Benefits ("WIC Benefits") and/or government delivered Cash Benefits (Cash Benefits, together with FNS, SNAP and WIC Benefits, collectively are referred to as the "EBT benefits") to EBT benefit recipients ("EBT customers"), subject to the terms below.

16.1. Acceptance of EBT Benefits. You agree to accept EBT Cards and provide EBT benefits to EBT customers through the use of a POS Terminals, PIN pad and printer or other equipment that meet standards set forth in the EBT Rules ("Authorized Terminal") applicable to such EBT benefits during your normal business hours, in a manner consistent with your normal business practices and in accordance with the EBT Rules.

The "EBT Rules" means (i) all procedures that we establish and provide to you from time-to-time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and as approved by the Financial Management Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 16, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and any additional procedures specified by

the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The "Food Stamp Program" is the government benefits program operated under the authority of the Food Stamp Act of 1964.

You will provide EBT benefits to EBT customers, in accordance with the procedures set forth in the EBT Rules, in the amount authorized through your Authorized Terminal upon presentation by an EBT customer of an EBT Card and such EBT customer's entry of a valid PIN. If the Authorized Terminal fails to print EBT benefit issuance information as approved and validated as a legitimate transaction, you will comply with the procedures set forth in the EBT Rules for authorization of EBT benefits in such instance. You are solely responsible for your provision of EBT benefits other than in accordance with authorizations timely received from EBT service provider. You will not resubmit any EBT Card transaction except as specifically permitted by the EBT Rules and procedures applicable to such EBT Card transaction. You must provide a receipt for each EBT transaction to the applicable EBT customer.

You will not accept any EBT Card for any purpose other than providing EBT Benefits, including without limitation accepting an EBT Card as security for repayment of any EBT customer obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the state or us for any EBT benefits unlawfully received by either you or an EBT customer to the extent permitted by law. Cash should never be dispensed for FNS, SNAP and WIC Benefits. You authorize us to initiate EBT Card transactions and to receive settlement for such transactions on your behalf.

16.2. Manual EBT Vouchers. In accordance with the procedures set forth in this Section 16 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by Merchant:

- i. An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any FNS, SNAP and WIC Benefits, or Cash Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.
- ii. Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.
- iii. All manual voucher authorizations must be cleared on your Authorized Terminal before payment of voucher will be made to you. Vouchers must be cleared within 10 Business Days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.
- iv. In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.
- v. Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction when you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 16 or otherwise fail to process the manual transaction in accordance with the EBT Rules.
- vi. If you have not received an authorization number in accordance with paragraph 16.1 above, you may not "re-submit" a manual sales draft for payment for the transaction.

16.3. Acceptance of EBT Cash Benefits. If you agree to accept EBT Cards and to provide Cash Benefits, you agree to maintain adequate cash on hand to issue EBT service provider authorized Cash Benefits and will issue such Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require, and may not in your

advertising suggest, that any EBT customers must purchase goods or services from you as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate and direct EBT customers to special checkout lanes restricted to use by EBT customers unless you also designate and direct other customers to special checkout lanes for Debit Cards or Credit Cards and/or other payment methods such as checks other than cash.

16.4. Interoperability. If you accept Cards and provide EBT benefits (FNS, SNAP and WIC Benefits and/or Cash Benefits), you must do so for EBT customers from all states.

16.5. Required Licenses. If you provide FNS, SNAP and WIC Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized merchant and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not accept EBT Cards or provide EBT benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

16.6. Term and Termination. If you are disqualified or withdrawn from the Food Stamp Program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification, we have the right to immediately terminate the provision of service under this Section 16 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there shall be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension or termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 16 or the Agreement, as applicable.

The provision of services under this Section 16 shall terminate automatically if our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 16.

16.7. Confidentiality of EBT System Information. All information related to EBT customers and/or the issuance of EBT benefits shall be considered confidential information.

Individually identifiable information relating to an EBT customer or applicant for EBT benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of all non-public personal information or materials regarding customers ("NPPI"); (2) protect against any anticipated threats or hazards to the security or integrity of NPPI; (3) protect against unauthorized access to or use of NPPI that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of NPPI; and (b) take appropriate actions to address incidents of unauthorized access to NPPI, including notification to us as soon as possible.

The use of information obtained by you in the performance of your duties under this Section 16 will be limited to purposes directly connected with such duties.

16.8. EBT Service Marks. You will adequately display any applicable state's service marks or other licensed marks, including the Quest Marks, and other materials supplied by us, (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider endorse your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Section 16 remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

16.9. Miscellaneous.

16.9.1. Errors. You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 16. You will promptly notify us of any such errors or disputes.

16.9.2. Issuance Records.

- i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.
- ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g. microfilm, etc.) related to this Section 16 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.
- iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.
- iv. To assure compliance with this Agreement, including without limitation this Section 16, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

16.9.3. Training. You will train and permit your employees to receive training regarding the issuance of EBT benefits.

16.9.4. Amendments. Notwithstanding anything to the contrary in this Agreement, if any of these terms and conditions are found to conflict with the EBT Rules or federal or state policy, these terms and conditions are subject to reasonable amendment by us, a state or its EBT service provider to address such conflict upon twenty (20) days' written notice to you provided that you may, upon written notice, terminate your obligation under this Section 16 upon receipt of notice of such amendment.

16.9.5. State Action. Nothing contained herein shall preclude a state from commencing appropriate administrative or legal action against you or for making any referral for such action to any appropriate federal, state, or local agency.

16.9.6. Reference to State. Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 16. If you accept EBT benefit in more than one state pursuant this Section 16, then the reference will mean each such state severally, not jointly.

16.9.7. Third Party Beneficiaries. These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 16.

17. Special Provisions Regarding Wireless Service

If you elect to purchase the Wireless Services from us, then the following terms and conditions of this Section 17, referred to as the "Wireless Services Terms," shall apply. THE WIRELESS SERVICES ARE BEING SOLD TO YOU FOR USE IN

BUSINESS AND ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions processed and other matters contemplated under this Section 17 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 17 directly conflict with another section of this Agreement, in which case the terms of this Section 17 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

Through one or more third party vendors ("Wireless Vendor(s)") selected by us in our sole discretion, we have acquired the right to resell certain wireless data communication services that use radio base stations and switching offered by certain cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to Processor and Bank certain wireless Card Authorization transactions or to transmit other communications to our system ("Wireless Services").

If you elect to purchase voice and/or data services directly from a third party provider for use with the Wireless Equipment as permitted by Processor, you acknowledge and agree that this Agreement does not address or govern those voice and/or data services or your relationship with that third party provider, and Servicers are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

17.1. Purchase of Wireless Services. The prices that you will pay for the Wireless Services are set forth on the Application. In connection with your purchase of Wireless Services, you will receive access to a certain Wireless Network(s).

- **Licenses.** You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- **Wireless Equipment.** You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the "Wireless Equipment"). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement, including without limitation Section 18 of this Agreement, apply to your use of such Wireless Equipment.
- **Improvements/General Administration.** We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.
- **Suspension of Wireless Services.** We or a Wireless Network may suspend the Wireless Services to: (a) prevent damages to, or degradation of, our or a Wireless Network's network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a Wireless Network from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending the Wireless Services to you. If not commercially reasonable to give prior notice, we will give notice to you as soon as commercially practicable thereafter. Availability of the Wireless Services may vary due to events beyond the control of us or our Wireless Vendors. In the event of a suspension of the Wireless Services, we or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

17.2. Software Licenses. Processor hereby grants to you a non-exclusive, nontransferable, revocable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor's systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 17 and Section 18 ("Wireless Software"). Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and

copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Wireless Software in your operation of the Wireless Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Wireless Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 17.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

17.3. Limitation on Liability. We shall have no liability for any warranties by any party with respect to uninterrupted Wireless Services, as set forth in Section 17.10, or for any Person's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services Terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Wireless Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies.

17.4. Indemnification. In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and us and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to:

- a. the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable;
- b. your negligent acts or omissions;
- c. any breach by you of any of your obligations under this Section 17; or
- d. any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

17.5. Confidentiality. All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either Wireless Vendor(s) or Servicers related to the subject matter of these Wireless Services Terms will be considered confidential information. You will safeguard our confidential information with at least the same degree of care and security that you use for your confidential information, but not less than reasonable care.

17.6. Termination. In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 17 may terminate:

- a. Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or
- b. Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

17.7. Effect of Termination. Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If these Wireless Services Terms terminate due to a termination of

the agreement between us or our Affiliates and Wireless Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Wireless Vendor(s) to you for a period of time to be determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

17.8. Third Party Beneficiaries. Wireless Vendor(s) are third party beneficiaries of these Wireless Services Terms and may enforce its provisions as if a party hereto.

17.9. Other Applicable Provisions. You also agree to be bound by all other terms and conditions of this Agreement.

17.10. Disclaimer. Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions that we do not control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

18. Terms of Equipment Purchase or Rental

This Section 18 governs any equipment that is rented to you on a month to month basis or that is sold to you by Processor under the Merchant Processing Application, subsequent purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("Equipment Documents"). If the Equipment Documents reflect that your equipment is leased, then the provisions of your lease are governed by Section 3.0 of Part III (Third Party Agreement) Equipment rented to or purchased by you under the Equipment Documents is referred to in this Section 18 as the "Equipment." THE EQUIPMENT IS BEING SOLD TO YOU FOR USE IN YOUR BUSINESS AND IS NOT BEING SOLD OR RENTED TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sales and rentals of equipment are made by Processor. The Services provided, Equipment, Equipment Documents and other matters contemplated under this Section 18 are subject to the rest of the Agreement as applicable except to the extent the terms of this Section 18 directly conflict with any other provision of the Agreement, in which case the terms of this Section 18 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to sales and rental of Equipment and Bank is not liable to you in any way with respect to such services. For purposes of this section the words "we," "our," and "us" refer only to Processor and not to Bank.

Warranties, if any, for the Equipment or any related Software originate from the applicable third party provider or manufacturer ("Vendor"). Materials or documents, if any, setting forth warranty terms, conditions, exceptions, exclusions and disclaimers will be contained within the packaging shipped from the Vendor.

We or third parties designated by us will only provide help desk support for Equipment purchased or rented from us under the Equipment Documents, and we will not provide any such support or related services for any other products or equipment.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US OR SUBSEQUENTLY PURCHASE OR RENT FROM US, MAY NOT BE COMPATIBLE WITH ANY OTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT

18.1. Purchased Equipment; Supplies. We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of this Agreement as being purchased by you (individually and collectively the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 18.7), except that any "Software" (as defined in Section 18.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 18.8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax and shipping and handling charges, prior to the effective date of this Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 18.5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon

invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 18.5. (Maintenance and repair of merchant-owned equipment is your responsibility). Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.)

18.2. Rental Equipment. We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively the "Rental Equipment"), according to the terms and conditions of this Section 18. In addition, any Equipment ordered by and rented to you during the term of this Agreement shall constitute Rental Equipment and be governed by the terms of this Section 18.

18.3. Effective Date and Term of Section 18. This Section 18 shall become effective on the first date you receive any piece of Equipment covered by this Section 18. This Section 18 will remain in effect until all of your obligations and all of our obligations under this Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of this Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Section 18 shall survive the termination or expiration of this Agreement and continue until all Rental Equipment is returned or paid for.

18.4. Site Preparation; Installation & Maintenance. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. You will support the installation in accordance with our requirements.

- Upon request, you must allow us (or our agents) reasonable access to the premises where authorization terminals or other communications equipment (e.g., printers) are or will be located.
- Any alterations required for installation of authorization terminal(s) or other communications equipment will be done at your expense.
- Only we or our agents can alter or modify authorization terminal(s) or other communications Equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding authorization terminals or other Equipment from loss, damage, unauthorized use, misuse or theft. We should be notified immediately regarding any damage to or loss of communications equipment.
- If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any Equipment used in connection with the services we are providing to you without first obtaining our permission.
- You must provide us with thirty (30) days prior written notice to request the relocation of any Equipment.
- Should you require additional Equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new Equipment ordered, including download fees).

18.5. Payment of Amounts Due.

- a. You agree to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month

of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 18.3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.

- b. You hereby authorize us to collect all amounts due from you under this Section 18 by initiating debit entries for such amounts to your account designated pursuant to the Merchant Agreement to be debited and credited for amounts due from and to the Settlement Account or by deducting such amounts from amounts due to you from TeleCheck or Servicers.
- c. In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges, or on this Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.
- d. Separate charges will apply for supplies; they are not included in monthly rental charges.

18.6. Use and Return of Equipment; Insurance.

- a. You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the Services You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.
- b. You shall not permit any physical alteration or modification of the Equipment without our prior written consent.
- c. You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.
- d. You shall not assign your rights or obligations under this Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.
- e. You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.
- f. We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- g. Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 18.11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.
- h. For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 18.11(b), you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 18.5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.
- i. Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- j. You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.
- k. Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).

I. In order to return equipment, you should:

- Call Customer Service for the address of the location to send the equipment.
- The following information must be included within the shipping box:
 1. Company name, complete address and phone number.
 2. Name of person to contact if there are any questions.
 3. Your Merchant Account Number.
 4. Serial number of the terminal (found on the underside of the terminal).
- Please maintain proof of delivery documents for your records, and the serial number from the bottom of the terminal.
- Rental fees may be continued until equipment is returned.

Payment acquisition and processing equipment and software sourced from Servicers or from a third party, is subject to obsolescence due to factors such as inability to accommodate required security and functional updates or due to model discontinuation by the manufacturer and unavailability of spare parts. Client acknowledges and understands that obsolete point of sale equipment will need to be replaced by non-obsolete and compliant point of sale equipment in the event of equipment failure, or as requested by Servicers to bring the Client into compliance with card network mandates and regulations. Client will be responsible for any costs associated with upgrading to non-obsolete and compliant equipment.

18.7. Security Interest; Financing Statements. You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price, and (b) all Rental Equipment and the related Software to secure payment of the monthly payments therefore and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

18.8. Software License. Anything in this Agreement to the contrary notwithstanding, we or certain parties retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive, non-transferable, revocable license to use the Software in your operation of the Equipment for purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Software to you or shall be construed as a sale of any rights in any such Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Software. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any third party access to the Software without our prior written consent. Your obligations under this Section 18.8 shall survive the termination of this Equipment Agreement.

18.9. Limitation on Liability. Notwithstanding any provision of this Agreement to the contrary and in addition to the limitations and disclaimers set forth in Section 7 of this Agreement (including without limitation the disclaimers in Section 7.2 of this Agreement), our liability arising out of or in any way connected with the Equipment or related software shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.

18.10. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

In addition to your other obligations hereunder, You acknowledge and agree that the "use" and "operation" of the Equipment for which you will indemnify and hold us harmless shall include, but not be limited to, You loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

18.11. Default; Remedies.

- a. If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Section 18, or if any other default occurs under this Agreement, any such event shall be a default hereunder.

- b. Upon the occurrence of any Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Section 18, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Section 18 shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

19. Special Provisions Regarding Gift Card Services

Gift Card Services are provided to you by Processor. The Services provided, transactions processed and other matters contemplated under this Section 19 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 19 directly conflict with another provision of this Agreement, in which case the terms of this Section 19 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Gift Card Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our," and "us" refer only to the Processor and not to the Bank. The terms and conditions set forth in this Section govern the provision of Gift Card Services.

19.1. Definitions. Capitalized terms used herein in this Section 19 shall have the meanings given to such terms as set forth in this Section or as defined in the Glossary or elsewhere in this Agreement.

- a. "ACH" means the Automated Clearing House system.
- b. "Affiliated Issuer(s)" means each Client Affiliate and/or franchisee that enters into an Affiliated Issuer Agreement, in the form required and provided by Processor.
- c. "Database" means the database on which Gift Card Data for each Gift Card issued under the Program is maintained.
- d. "Designated Location" means any store or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which Client issues Gift Cards and/or processes transactions using Gift Cards issued under the Program. Designated Locations include any help desk or IVR through which transactions are processed under the Program.
- e. "Enhanced Features" means the additional program functionality offered to Client pursuant to the Enhanced Features set-up form.
- f. "Gift Card" means an encoded device that accesses Gift Card Data maintained in the Database.
- g. "Gift Card Data" means the current value and record of transactions corresponding to each Gift Card issued under the Program.
- h. "Gift Card Equipment" means any POS Terminal, software or other similar telecommunications equipment that has been programmed and certified to Processor's specifications in order to transmit Gift Card Data and process online transactions under the Program.
- i. "Gift Card Holder" means any person in possession of or that uses a Gift Card.
- j. "Gift Card Number" means the identifying number of a Gift Card.
- k. "Gift Card Production Company" means a company selected and retained by Processor to produce Gift Cards and provide related products or services for the Program.
- l. "IVR" means an automated Interactive Voice Response system accessed via a toll-free telephone number.
- m. "POS Terminal" means an electronic Point-Of-Sale terminal placed in a Designated Location which is connected to Processor's system via telephone lines and is designed to swipe Gift Cards.
- n. "Program" means Client's program pursuant to which Client issues Gift Cards to Gift Card Holders and Processor provides the Services to enable such Gift Card Holders to use such Gift Cards to purchase goods and services at Designated Locations.
- o. "Services" means the services provided by Processor in connection with the Program as further described in this Section.

19.2. Services. Processor agrees to provide the Services set forth below in connection with the Program.

- a. Processor will arrange for the production of all Gift Cards and all other services related thereto by the Gift Card Production Company for the Program in accordance with the specifications and fees set forth on the Gift Card Set-Up Form (the "Gift Card Set-Up Form"), which is incorporated by reference herein.
- b. Processor shall establish and maintain Gift Card Data on the Database.

- c. Processor shall provide Client and its Affiliated Issuers with the capability to process selected transactions under the Program through Gift Card Equipment at Designated Locations.
 - d. Upon receipt of transaction information from a Designated Location by the Database, Processor will compare the proposed transaction amount with the account balance maintained on the Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Location. If the account balance is greater than or equal to the amount of the proposed transaction, Processor will authorize the transaction. If the account balance is less than the amount of the proposed transaction, Processor will decline the transaction. If Client's Gift Card Equipment supports "split tender," and the account balance is less than the amount of the proposed transaction, Processor will authorize the transaction for the amount of the account balance, and return a message and/or receipt to the Gift Card Equipment showing the remaining amount of the transaction to be collected by Client. Client understands and agrees that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.
 - e. Processor shall provide an IVR, twenty-four (24) hours per day, seven (7) days per week, through which Client and Gift Card Holders may obtain Gift Card balances.
 - f. Processor shall provide a Gift Card product support help desk through which Client may process selected non-financial transactions under the Program. Support is currently available Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time (excluding holidays). The hours and days of support are subject to change at any time; provided that (i) Processor will provide advance notice of any change in the hours and days; and (ii) the total number of hours shall not be less than 40 in any regular work week (excluding holidays).
 - g. Processor will provide Client with Gift Card transaction reports, accessible by Client through a designated Internet site. Processor will maintain reports on the Internet site for Client's use for a period of six (6) months. Processor may, in its discretion, provide additional or custom reports or report formats, as may be requested by Client from time to time, at a fee to be determined by Processor.
 - h. Client will at all times own all right, title and interest in and to all Gift Card Data generated under the Program. During the term, Processor will retain the Gift Card Data for each Gift Card on the Database for a period of twenty-four (24) months following the date that the account -balance reaches zero. Thereafter, during the term, Processor may remove the Gift Card Data from the Database and archive such Gift Card Data in any manner determined by Processor in its reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of Client's written request, during the first twelve (12) months following the expiration or termination of the Gift Card Services, Processor will compile a data report of the Gift Card Data stored in the Database, in Processor's standard format, at a fee to be determined by Processor. Processor shall deliver Client's Gift Card Data to Client in a mutually agreeable format. Processor shall have no obligations with respect to Client's Gift Card Data following delivery to Client.
 - i. Client may choose additional Enhanced Features from time to time pursuant to the Enhanced Features set-up form and Client expressly authorizes Company, and Company agrees, to provide Services with respect to Gift Cards sold and activated by third party distributors. As between Company and Client, Client shall be responsible for any acts or omissions of each third party distributor in connection with the sale or activation of any Cards. Client and Company agree that Company shall not be deemed to have failed to provide Services outlined herein with respect to any Card sold and activated by any third party distributor, including through any Designated Location, to the extent any such failure by Company is caused in whole or in part by any failure of any third party distributor or Client to provide to Company information regarding the sale and activation of such Card that is accurate, complete, timely and formatted in accordance with Company's instructions and specifications in all respects. Additional fees and charges may apply, including separate third party fees, for any Enhanced Features chosen by Client. Client may only work with Company approved third party distributors.
- 19.3. Responsibilities of Client.** The responsibilities of Client are set forth below and elsewhere in this Section.
- a. Client will accept for processing any transaction initiated by one of its customers using a Gift Card pursuant to the Services without discrimination with regard to the customer who initiated the transaction.
 - b. Client will securely maintain all transaction records and other records required by law or regulation to be maintained in connection with the operation of the Gift Card Equipment or the Program. Client will download and securely store any and all Gift Card transaction reports for future reference. In the event that Client needs a report for a period past such six (6) months, Processor may provide such requested report to Client at a fee to be determined by Processor.
 - c. Client will make its personnel and records available to Processor, its agents and contractors, all within such time and in such forms or manner as may be reasonably necessary to enable Processor to perform the Services promptly and in an efficient manner.
 - d. Client shall be responsible, at its sole cost and expense, for the sale and other distribution of Gift Cards to Gift Card Holders and for any marketing or advertising of the Program.
 - e. Client shall obtain, operate and maintain, at its sole cost and expense, all Gift Card Equipment required to enable Client and Affiliated Issuers to electronically transmit Gift Card Data in accordance with Processor's specifications from all Designated Locations to the Database.
 - f. Client is solely responsible for obtaining Authorization in advance of each transaction. Client is solely responsible for any losses it may incur in conducting transactions when an Authorization is not obtained, including, without limitation, transactions conducted when the Database or the Gift Card Equipment is not in service. Client assumes all risk of erroneous or fraudulently obtained Authorizations, unless such erroneous or fraudulently obtained Authorization is caused directly by Processor. Client understands and agrees that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number. Client is responsible for the accuracy of all data transmitted by it for processing by Processor.
 - g. Client shall be responsible for accessing and comparing the reports supplied by Processor to its own records and promptly notifying Processor of any necessary adjustments to Gift Card accounts. Client acknowledges that Processor will make adjustments to Gift Card accounts pursuant to Client's instructions, and Processor shall have no liability for any errors to Gift Card accounts that are made in accordance with Client's instructions.
 - h. Client shall comply and shall ensure that all Affiliated Issuers comply with all laws and regulations applicable to the Program. Client acknowledges and agrees that it is solely responsible for interpreting all laws and regulations applicable to the Program, for monitoring changes in laws and regulations applicable to the Program, and for determining the requirements for compliance with laws and regulations applicable to the Program. Processor shall be entitled to rely upon and use any and all information and instructions provided by Client for use in performing the Services and Processor shall have no liability whatsoever for any noncompliance of such information or instructions with laws or regulations.
 - i. As between Client and Processor, Client shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN: (i) in the case of Gift Cards ordered through Processor, upon delivery of such Gift Cards to Client or Client's Designated Location, as applicable, and (ii) in the case of Gift Cards obtained by Client from a Person or Gift Cards which Client requests to be delivered in a pre-activated state, whether such loss occurs before or after delivery of such Gift Cards to Client or Client's Designated Location.
 - j. Processor and Client agree that during the term: (i) Processor will be the sole and exclusive provider of the Services to Client and its Affiliated Issuers; and (ii) Client will not directly or indirectly either itself or through a Person, offer or promote any other proprietary, closed network, online Gift Card or similar access device.
 - k. Client may allow Affiliated Issuers to participate in the Program; provided, however that (i) Client shall be responsible for ensuring that all Affiliated Issuers comply with the terms and conditions of this Section and the separate Affiliated Issuer Agreement, and (ii) Client shall be jointly and severally liable for all fees and other amounts payable to Processor in connection with any activities of Affiliated Issuers related to this Section, including but not limited to Gift Card transactions.
 - l. Client is responsible for any settlement of funds among Affiliated Issuers and Designated Locations.
- 19.4. Fees and Payment.**
- a. In addition to all other rights we have under the Agreement, Client shall pay Processor the fees set forth on the Gift Card Set-Up Form. Client shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this

Section (other than those taxes based solely on the net income of Processor). All fees for the Services shall be paid via an ACH transfer of funds from a bank account designated by Client. To authorize the ACH transfers, Client agrees to execute the ACH Authorization on the Gift Card Set-Up Form. In the event that fees cannot be collected from Client as set forth above, Processor reserves and may exercise all other rights to collect any fees due.

19.5. Termination.

- a. The provision of Gift Card Services may be terminated at any time: (i) by either party in the event that the other materially breaches any term or condition of this Section and fails to cure such breach within thirty (30) days of written notice of such breach from the non-breaching party; (ii) by Processor if Client fails to pay any amount due within ten (10) Business Days after written notice to Client of its failure to pay such amount; (iii) by Processor upon written notice to Client in the event that Client's operation of the Program results in a violation of law or regulation (by Client, an Affiliated Issuer or Processor); (iv) by Client if Processor increases its rates under Section 19.4(c) above and Client provides thirty (30) days written notice of termination within thirty (30) days of receiving notice of said increase; or (v) by either party upon written notice to the other after the filing by the other of any petition in bankruptcy or for reorganization or debt consolidation under the federal bankruptcy laws or under any comparable law, or upon the other party's making of an assignment of its assets for the benefit of creditors, or upon the application of the other party for the appointment of a receiver or trustee of its assets.
- b. If (i) the Gift Card Services are terminated for any reason other than Processor's material breach prior to the expiration of the initial term, or (ii) Client suspends or terminates the Program prior to the expiration of the initial term except as provided for in Section 19.5(a) (iv). Nothing in this subsection shall prohibit or limit Processor's right to recover damages or any other amounts due and owing Processor in the event that the Gift Card Services are terminated by Processor due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 19.6(a).
- c. If requested by Client, Processor may, in its sole and absolute discretion, continue to provide the Services for all previously issued and unexpired (if applicable) Gift Cards for up to twelve (12) months following the termination of the Gift Card Services; provided, however, that Processor shall not activate any new Gift Cards after the effective date of termination. Processor's obligation to provide continuing Services after termination is contingent upon Client's agreement to pay for such Services and to conduct its operations in accordance with the terms of this Section, and Processor may require advance payment for some portion or all of the estimated cost of such Services to be provided after termination.
- d. Termination of the Gift Card Services shall not affect Client's obligation (including any obligation incurred by an Affiliated Issuer, to pay for services rendered or obligations due or owing under this Section prior to termination.
- e. The provisions of Sections 19.3 (f), (g), (h), (i), (k) and (l), and Sections 19.4, 19.5(b), 19.5(c), 19.5(d), 19.6 and 19.7 hereof shall survive any termination of this Agreement.

19.6. Indemnification.

- a. Client shall indemnify and hold harmless Servicers, their directors, officers, employees, agents and their respective Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of Client or an Affiliated Issuer to comply with any law or regulation applicable to the Program; (ii) any dispute between Client and any Affiliated Issuer, or Client and any Gift Card Holder, or an Affiliated Issuer and any Gift Card Holder, including, without limitation, any dispute regarding the goods or services purchased using a Gift Card or the payment of any amounts owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that Client may provide to Processor in connection with the Program and Processor's compliance therewith; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN; (v) use or operation of Gift Card Equipment by Client or an Affiliated Issuer; and (vi) any Claim or action against Servicers for actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary right of any person arising in connection with the production of Gift Cards or related products for Client using artwork, designs, specifications or concepts provided by Client.
- b. Processor shall indemnify and hold harmless Client and its directors, officers, employees, agents and Affiliates Issuers from and against any and all third

party Claims to the extent that any such Claim is caused by or arises out of: (i) any failure of Processor to comply with any law or regulation applicable to the Program; or (ii) any error in the Database, unless the error is caused by incorrect information submitted by Client or is otherwise made in accordance with Client's instructions.

19.7. Patents, Copyrights, Intellectual Property, etc. Client shall have no interest whatsoever, including copyright interests, franchise interests, license interests, patent rights, property rights or other interest in the Services provided hereunder. These provisions are not to be construed as granting to Client any patent rights or patent license in any patent, which may be obtained in respect of the Services. Artwork created by Processor on behalf of Client remains the property of Processor. Client retains ownership of any artwork supplied to Processor.

19.8. Limitation of Liability; Disclaimer of Warranties.

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO PROCESSOR BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000).

20. Special provisions Regarding TransArmor® Services

If you elect to utilize the TransArmor Service, the following additional terms and conditions of this Section 20 shall apply.

The TransArmor Service is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the TransArmor Service, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not the Bank.

The TransArmor Service provided, transactions processed and other matters contemplated under this Section 20 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 20 directly conflict with another provision of this Agreement, in which case the terms of this Section 20 will control.

20.1. Definitions. Capitalized terms used herein in this Section 20 shall have the meanings given to such terms as set forth in this Section or as defined in the Glossary or elsewhere in this Agreement.

"Legacy Data Conversion" means that process by which historical information containing primary account Numbers (PAN) from transactions completed by you prior to implementation of TransArmor will be converted to information containing a Token.

"Multi-Pay Token" shall mean your specific alpha-numeric value that is: (i) randomly generated when a Card number is requested to be registered by you as your specific Token upon receipt of Cardholder approval to register the Card number; (ii) becomes associated with you and the Card within Processor and its Affiliates' systems; (iii) can be stored by you in your systems in lieu of the Card number to represent the Card number; (iv) can be used to initiate authorization processing for Cardholder-initiated or recurring payments; (v) may be retrieved by Processor or its Affiliates within their systems in connection with processing future transactions involving the same Card number or registered Token when submitted by you for authorization processing; and (vi) is returned to you from Processor or its Affiliates' systems as part of the Register PAN Response and/or authorization response.

"Registered PAN Response" is defined as the registration of a specific Card number (i.e., PAN) for purposes of associating that PAN with a specific Token.

"Token" means an alpha-numeric value that: (i) is randomly generated when a Card number used in a transaction is initially submitted by you for authorization processing; (ii) becomes associated with the Card within Processor and its Affiliates' systems; (iii) may be retrieved by Processor or its Affiliates within their systems in connection with processing future transactions involving the same Card number when submitted by you for authorization processing; and (iv) is returned to you from Processor or its Affiliates' systems as part of the authorization response.

"Token Request" shall mean your request to obtain a Multi-Pay Token for credit card information only (i.e., without an immediate authorization required), which permits you to store a Multi-Pay Token for future transactions involving the Cardholder.

"TransArmor Service" means those services described in Section 20.3 and may be either TransArmor VeriFone Edition Service or TransArmor RSA Service as selected by you.

20.2. Grant of License. Processor grants to you a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 20 to use the TransArmor Service and the TransArmor Service Marks (as identified in the TransArmor Rules and Procedures) in the United States in accordance with this Section 20, including without limitation the TransArmor Rules and Procedures. Any rights with respect to the TransArmor Service not expressly granted by Processor in this Section 20 are deemed withheld.

20.3. Services. The TransArmor Service applies only to Card transactions sent from you to us for authorization and interchange settlement pursuant to the Agreement, and specifically excludes electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, WEX, Inc. transactions, Voyager transactions, and other Card types that are not capable of being tokenized. Processor and Client may agree to include additional transaction types in the TransArmor Service when made available by Processor. Processor will provide an encryption key or other encryption capability to you to be used to encrypt (make unreadable) Card data during transport of the authorization request from your point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated Token or Multi-Pay Token assigned to the Card number that will be returned to you in the authorization response. You must select one of the two options for the TransArmor Service as indicated on the Merchant Processing Application:

- TransArmor VeriFone Edition Service. This service option is limited to those Clients which have an eligible VeriFone point of sale ("POS") devices and desire the software or hardware based encryption and tokenization to be activated through the VeriFone device.
- TransArmor RSA Service. This service option provides software based encryption and tokenization that is available to all Clients to integrate into their POS or the point of sale device, if available or supported.

20.4. Responsibilities of Client. You are responsible to comply with the following regarding your use of the TransArmor Service:

- a. You are required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). You must ensure that all third parties and software use by you in connection with your payment card processing are compliant with PCI DSS. Use of the TransArmor Service will not, on its own, cause you to be compliant with, or eliminate your obligation to comply with PCI DSS or any other Card Organization Rule. You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated: (i) either (A) by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or (B) by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), and (ii) if applicable to your business, by passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.
- b. Use of the TransArmor Service is not a guarantee against an unauthorized breach of your point of sale systems or any facility where you process and/or store transaction data (collectively, "Merchant Systems").
- c. You must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your Merchant Systems including replacing existing Card numbers on your Merchant Systems with Tokens or Multi-Pay Tokens, as applicable. Full Card numbers must never be retained, whether in electronic form or hard copy.
- d. You must use the Token or Multi-Pay Token, as applicable, in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e. Any point of sale device, gateway and/or value added reseller used by you in connection with the TransArmor Service must be certified by Processor for use with the TransArmor Service.
- f. If you send or receive batch files containing completed Card transaction information to/from Processor, you must utilize the service provided by

Processor to enable such files to contain only Tokens or Multi-Pay Tokens, as applicable or truncated information.

- g. You must utilize truncated report viewing and data extract creation within reporting tools provided by Processor.
- h. You are required to follow rules or procedures we may provide to you from time to time related to your use of the TransArmor Service ("TransArmor Rules and Procedures"). We will provide you with advance written notice of any such rules or procedures and any changes to such rules or procedures.
- i. You have no right, title or interest in or to the TransArmor Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to you. You shall not take any action inconsistent with the stated title and ownership in this Section 20. You will not file any action, in any forum that challenges the ownership of the TransArmor Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate this Section 20 and your access to and use of the TransArmor Service in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.
- j. You will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; (iii) sell, license or otherwise distribute the TransArmor Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor Service as a standalone program or in any way independently from the TransArmor Service. If any portion of the TransArmor Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, you will not remove, alter, modify, relocate or erase such notice or legend on such item.
- k. You will only use the TransArmor Service for your internal business purposes in a manner consistent with this Agreement.
- l. You will use only unaltered version(s) of the TransArmor Service and will not use, operate or combine the TransArmor Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Section 20.
- m. You will promptly notify Processor of a breach of any terms of this Section 20.
- n. You must obtain a Cardholder's written or electronic consent to store a Multi-Pay Token to represent such Cardholder's Card number for future purchases.
- o. You must store the Multi-Pay Token in its Merchant Systems in lieu of the Card number for all Cardholder profile records.
- p. You must require Cardholders to log into their Cardholder profile in order to initiate a Transaction with the registered Token. This login must require two factors authentication, such as a user ID and password.
- q. If you cease a processing relationship, then you must permanently delete all Tokens or Multi-Pay Tokens, as applicable, contemplated under this Section 20 from all Merchant Systems no later than ninety (90) days after the termination or expiration of the processing relationship.

20.5. Term; Amendment; Termination. Unless prohibited by applicable law, Processor may modify this Section 20 by providing written notice of such modifications to you. You may choose not to accept the requirements of any such modifications by notifying Processor in writing within thirty (30) days after receiving the modifications notice that you are terminating the TransArmor Service provided under this Section 20. In addition to any termination rights in this Section 20, Processor may terminate the TransArmor Service (i) upon thirty (30) days' advance written notice to you, or (ii) immediately if your material breach of the terms contained in this Section 20 remains uncured for ten (10) days following your receipt of written notice of such breach from Processor.

20.6. Fees. Client shall pay the fees for TransArmor Service as set forth on the Application.

20.7. TransArmor Limited Warranty ("Limited Warranty"). Processor warrants that the Token or Multi-Pay Token, as applicable, returned to you, as a result of using the TransArmor Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Processor is referred to herein as the "Limited Warranty" and is subject to the terms and conditions set forth in this Section 20. To be eligible for the Limited Warranty, you must maintain a processing relationship with Processor and be in compliance with all the terms of the Agreement, including

this Section 20, and any other agreement relating to transaction Cards eligible for the TransArmor Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Processor agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from Processor's breach of the Limited Warranty. The express remedy for Processor's breach of the Limited Warranty set forth in this paragraph constitutes Processor's entire liability and your sole and exclusive remedy for Processor's breach of the Limited Warranty. The Limited Warranty is void if (i) you use the TransArmor Service in a manner not contemplated by, or in violation of, the Agreement, including this Section 20, or any other agreement relating to transaction Cards eligible for the TransArmor Service or (ii) you are grossly negligent or engage in intentional misconduct.

20.8. TransArmor Disclaimer. IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE TRANSARMOR SERVICE: EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 20, PROCESSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE TRANSARMOR SERVICE, INCLUDING THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE TRANSARMOR SERVICE OR NONINFRINGEMENT.

21. Special Provisions Regarding Fraud Detection Services

If you elect to receive Fraud Services from us, then the following terms and conditions of this Section, referred to as the Fraud Services Terms, shall apply.

The Fraud Detection Services is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Fraud Detection Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not the Bank.

Through our strategic agreement with Accertify, Inc. we have acquired the right to sublicense the access and use of Interceptas, InterceptNOW and InterceptSHARE, which are software systems and related services that will help you efficiently reduce your exposure to fraudulent transactions (the "Fraud Services"). The Fraud Services are proprietary products and services of Accertify, Inc., and may include specific data and services from third party service providers for things like geolocation or device identification, which are specific tools used together with Accertify's software. For all purposes of the Fraud Services Terms, the term Fraud Services includes any such third party data or service providers accessed through any of Accertify's proprietary software described above.

21.1. Software Licenses. We hereby grant you a non-exclusive, non-transferable, limited sublicense to use the Fraud Services for the duration of this Agreement, or until otherwise terminated, solely in connection with your use of the payment and processing services otherwise described in this Program Guide. You acknowledge that the only right you obtain to the Fraud Services is the right to use the Fraud Services for the screening and review of your own transactions in accordance with the terms in this Section.

The Fraud Services and related materials include confidential, competitively sensitive and trade secret information, processes, software, user interfaces and other elements. You are not permitted to allow any third party service provider access to these materials or to the output generated by the Fraud Services, nor use or demonstrate the Fraud Services or related materials for, or on behalf of, any third party service provider without the prior written permission of the Fraud Services provider.

21.2. Reservation of Rights. Subject only to the limited sublicense granted herein, we and the Fraud Services provider(s) reserve all ownership rights to our and their respective intellectual property related in any way to the Fraud Services. We reserve the right to alter or suspend the Fraud Services in the event of (i) a violation of Fraud Services Terms or (ii) the termination of the agreement with our Fraud Services provider or other inability to continue to provide the Fraud Services.

21.3. Transaction Data. Your transaction data will be processed by the Fraud Services. As part of this processing, the transaction data may be retained for statistical analysis, and elements of data from fraudulent transactions may be captured, retained and shared with others to help improve the Fraud Services and prevent further fraud. In no event will the source of any such retained data be disclosed to a third party. You hereby agree to the transmission and use of the data in this manner.

21.4. Disclaimer of Warranties. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS MAY BE EXPRESSLY PROVIDED HEREIN, THE FRAUD SERVICES ARE PROVIDED TO YOU "AS IS," WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDED IN THIS DISCLAIMER ARE BOTH EXPRESS AND IMPLIED WARRANTIES, AND WITHOUT LIMITATION,

WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT THE FRAUD SERVICES WILL BE COMPLETELY ACCURATE, ERROR-FREE OR WILL BE AVAILABLE WITHOUT INTERRUPTION.

21.5. Limitation of Liability. The Fraud Services provide a tool for you to efficiently make better informed decisions whether to accept or reject transactions that may be fraudulent. There is no assurance that the Fraud Services will accurately identify every instance of fraud, nor that every transaction that may appear fraudulent is in fact so. **BY YOUR ACCEPTANCE OF THE TERMS OF THIS PROGRAM GUIDE, AND YOUR USE OF THE FRAUD SERVICES, YOU AGREE THAT, UNDER ANY THEORY OF LAW OR EQUITY, WITH RESPECT TO YOUR USE OF THE FRAUD SERVICES (I) OUR LIABILITY AND THAT OF ANY FRAUD SERVICES PROVIDER SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED TWELVE (12) MONTHS OF FRAUD SERVICES FEES, AND (II) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER WE NOR ANY FRAUD SERVICES PROVIDER SHALL HAVE ANY LIABILITY FOR ANY SUBSEQUENT CHARGEBACKS OR LOSS OF REVENUE FROM FALSE POSITIVE FRAUD SCORES OR IN ANY OTHER WAY RELATED TO THE USE OF THE FRAUD SERVICES.**

21.6. Termination. Upon termination of the Fraud Services for any reason, you agree to pay any remaining fees or expenses related to your use of the Fraud Services, to cease attempts to access the Fraud Services and to return all user manuals or other materials received in connection with the Fraud Services.

21.7. Third Party Beneficiaries. The Fraud Services provider(s) is (are) an intended third party beneficiary of this Section of the Program Guide, and may enforce the terms of this Section directly against you as if it were a party hereto.

21.8. Your Privacy Policy. Your privacy policy should reflect the fact that you will subject transactions to fraud screening. You and your privacy legal counsel should consider your specific circumstances and what disclosures will best fit your needs and provide your customers with a clear picture of how customer and transaction data is being used. Example language is set forth below, but is only a suggestion, which you should not adopt without careful consideration and advice of counsel.

Any information you provide to Merchant may be combined with information from other sources and used by Merchant, or a third party retained by Merchant, to help detect and prevent fraud, misuse of [Merchant]'s website or other illegal activity. Parts or all of this information may be retained by us or the third parties involved in fraud detection and used for future fraud prevention efforts. Information believed to be fraudulent may be shared with other merchants, banks and law enforcement officials to help prevent further misuse. [Merchant] may also use "device identification" technology to recognize specific computers or other internet devices each time they access the website, and associate historical data with that computer or device as part of its efforts to prevent fraud or other misuse.

22. Special Provisions Regarding Buyer Initiated Payments

The terms and conditions set forth in this Section 22 govern the provision of Buyer Initiated Payment services and apply only to Card payments that originate from a business certified into a Card Organization approved gateway for Buyer Initiated Payments. These provisions do not apply to any transactions originating from a terminal or software at your business.

22.1. Description of Buyer Initiated Payments. Buyer Initiated Payments ("BIP") allow invoices that have been electronically entered at the cardholding buyer's location to be processed by us for settlement to you (the seller of goods and services in B2B transactions) without you manually re-entering the same pieces of card and invoice information.

Use of this service only changes the method of payment between you and your Buyer (your customer). All other processes between you and the Buyer as it pertains to invoicing, approvals and exceptions will remain as is for each Buyer paying you through this service.

22.2. Acceptance of Buyer Initiated Payments.

- There is no hardware, software, or supplies required to accept Buyer Initiated Payments.
- All transactions submitted through a BIP account must be Buyer initiated. You cannot request a terminal or initiate transactions in any way through the Merchant ID established by these terms. Merchant processing must be done through a separate Merchant ID.
- No credits are permitted on BIP accounts. In the event of a dispute regarding a Buyer Initiated Payment, all refunds, discounts, or other remedies must be handled between you and your customer, the Buyer, without the involvement of Servicers.

- d. It is your responsibility to ensure that only customers that you authorize to submit payments on this account do so. We will not disclose the fact that you are enrolled to receive BIP to other businesses unless you authorize us to do so.
- e. If a business does process a payment on the account without your consent, you must handle the matter directly with your customer, the Buyer, without the involvement of Servicers.
- f. Servicers are responsible for processing the BIP. Any concessions given by your customers such as accelerating payment terms or changing early payment discounts are not administered or enforced by Servicer. Such agreements are strictly part of the relationships between your business and those of your buyers and the resolution to issues arising from those arrangements are to be handled outside of this Agreement.

22.3. Chargebacks related to Buyer Initiated Payments. In BIP processing, the Buyer has control over the payment, and is therefore prohibited from initiating most charge back types. In the event your buyer initiates a charge back on this Merchant ID, please contact Servicers.

22.4. Limitation on Liability/Indemnification. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICER'S CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO SERVICERS BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000), WHICHEVER IS LESS.

22.5. Indemnification. Client shall indemnify and hold harmless Servicers, its directors, officers, employees, agents and Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of Client to comply with this Agreement or any law or regulation applicable to BIP; (ii) any dispute between Client and Buyer; or (iii) any instructions or procedures that Client may provide to Servicers in connection with the Buyer Initiated Payments and Processor's compliance therewith.

22.6. Processing Specifications. The following details apply to how Servicers transfers monies between parties.

- a. Unless otherwise specified by you on the Application, amounts deposited into your account will be in the whole amount of the payment from your customer. After a payment is made by the Buyer, it typically takes one to three business days for the funds to be deposited into your checking account.
- b. Unless otherwise specified by you on the Application, the fees applied to your transactions will be debited from your Settlement Account on or about the first business day of the month following when the transactions occurred. It is your responsibility to ensure that there are no settings on your account prohibiting a debit entry. You must ensure there are adequate funds available in your Settlement Account.

22.7. Authorization. Authorization will occur at the Servicers or relevant Card Organization.

22.8. Termination. As stated on your Application, there is no early termination fee associated with BIP accounts. At any time, you are able to terminate service by calling the customer service number listed on your statement. It is your responsibility to contact your Buyers to inform them that a different payment option will be needed on future invoices. We can terminate BIP services upon 30 days notice to you or immediately in the event of your breach of the Agreement.

23. Special Provisions Regarding First Data Global Gateway e4 Services

If you elect to utilize the Global Gateway e4 Services, the following additional terms and conditions of this Section 23 shall apply.

The Global Gateway e4 Services are provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Global Gateway e4 Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this Section 23, the words "we," "our" and "us" refer only to the Processor and not the Bank.

The Global Gateway e4 Services and Software provided and other matters contemplated under this Section 23 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 23 directly conflict

with another provision of this Agreement, in which case the terms of this Section 23 will control.

23.1. Definitions. Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 23.1 or as defined in the Glossary or elsewhere in this Section 23.

"Claim" means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any Intellectual Property Right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmatured.

"Confidential Information" means the Software, Documentation, operational procedures, the terms and conditions of this Section 23 (including any schedule, exhibit or addendum), pricing or other proprietary business information, and any other information provided to you by us, whether or not such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of yours; (b) was lawfully obtained by you from a third party free of any obligation of confidentiality; (c) was already in your lawful possession prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by you without the use of the Confidential Information; (e) is disclosed with our express written permission; or (f) is disclosed pursuant to a lawful court or governmental order, provided you provide us with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

"Customer" means your customer who would like to provide payment for your goods or Services.

"Documentation" means any and all manuals and other written materials in any form provided for use with the Software, as amended by us from time to time, the terms of which are incorporated in this Section 23 as if fully set forth herein.

"Intellectual Property Rights" means any and all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights, and any applications for any of the foregoing, in all countries in the world.

"Merchant Account" shall mean an account set up for a merchant that requires a card processor, bank, merchant i.d., terminal i.d., merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account.

"Operational Procedures" means our published policies and procedures contained in the various documents provided to you, as amended from time to time, concerning the Services provided pursuant to this Addendum, the terms of which are incorporated in this Addendum as if fully set forth herein.

"Platform" means our operated, or approved, electronic payment platform(s) and/or gateway(s) through which the payment services contemplated under this Section 23 are provided.

"Services" means the products or services offered through the First Data Global Gateway (including, but, not limited to payment processing services such as authorization of transactions to the appropriate payment processing network or third party service provider, transaction responses (approved, declined), and the detailed reporting of those transactions).

"Software" means all protocols, software components and other interfaces and software provided by us to you pursuant to this Section 23, and any and all Updates to such Software.

"Your Systems" means any web site(s) operated or maintained by you or on your behalf through which transactions are submitted for processing, and all of your other associated systems.

"Updates" means an embodiment of the Software that provides enhancements and/or improvements.

23.2. Fees. Client shall pay Processor the fees for the Global Gateway e4 Services as set forth on the Application. A separate account with us for Global Gateway e4 Services shall be required for each separate Merchant Account held by you.

23.3. Term; Termination. The Global Gateway e4 Services shall commence as of the effective date of this Agreement and shall remain in effect until terminated by either party as provided herein. Either party may terminate these Services upon giving the other party at least thirty (30) days prior written notice. We may suspend or terminate your access to the First Data Global Gateway e4

without prior notice, with or without cause. Regardless of the reason for termination, you shall be responsible for the payment of all fees due up to and including the effective date of termination.

23.4. License Grant.

23.4.1. Software License. Subject to the terms and conditions of this Agreement, Processor grants to you a royalty free, non-exclusive, nontransferable limited license to use the Software, during the term of this Agreement for the sole and limited purpose of submitting payment transactions to us for processing, and otherwise using our Services as set forth herein.

23.4.2. Documentation License. Subject to the terms and conditions of this Agreement, Processor grants to you, and you hereby accept, a royalty free, non-exclusive, non-transferable limited license, without right of sublicense, to use the Documentation during the term of this Agreement for the sole and limited purpose of supporting your use of the Software and the First Data Global Gateway e4. You shall strictly follow all Documentation provided to you, as it may be amended from time to time by us, in our discretion. To the extent that there is any conflict between the Documentation and the terms of this Agreement, the terms of this Section 23 shall govern and control.

23.4.3. Use Restrictions. You shall not, and shall not cause or permit any third party to: (i) use the Software in any way, other than in accordance with this Agreement, the Documentation or as otherwise instructed by us in writing; (ii) use the Software or Documentation, either directly or indirectly, to develop any product or service that competes with the products and services provided under this Section 23; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Software, or otherwise apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any algorithm, process, procedure or other information contained in the Software, except as otherwise specifically authorized in accordance with this Section 23; (iv) provide the Software or Documentation to any third party, other than to your authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of this Section 23; (v) make any copies of the Software or Documentation, except as is incidental to the purposes of this Section 23, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, assign, sublicense, transfer, distribute, allow access to, or timeshare the Software or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Software; (ix) attempt to access or actually access portions of the First Data Global Gateway e4 not authorized for your use; or (x) use the Software for any unlawful purpose.

23.4.4. Updates. From time to time we may, at our discretion, release Updates. In the event we notify you of any such Update, you shall integrate and install such Update into your Systems within thirty (30) days of your receipt of such notice. You acknowledge that failure to install Updates in a timely fashion may impair the functionality of the Platform or any of our Services provided hereunder. We will have no liability for your failure to properly install the most current version of the Software or any Update, and we will have no obligation to provide support or services for any outdated versions.

23.4.5. Licensors. The licenses granted hereunder may be subject to other licenses currently held by us. Should any license held by us to certain technology or software be terminated or suspended, the corresponding license(s) granted to you hereunder may also be terminated or suspended in our sole and absolute discretion. You acknowledge and agree to such potential termination or suspension and hereby waive any and all damages, whether actual, incidental or consequential resulting therefrom.

23.4.6. Export Compliance. You agree not to export or re-export the Software or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) to any country to which the United States has embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders; or (iii) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. If you have rightfully obtained the Software outside of the United States, you agree not to re-export the Software except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained the Software. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

23.4.7. Federal Acquisition Regulations. If you are acquiring the Software on behalf of any part of the United States Government (the "Government"), the following provisions apply: Any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. We are the contractor/manufacturer, with the address set forth below. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Addendum and shall be prohibited except to the extent expressly permitted by the terms of this Section 23.

23.4.8. Return/Destruction. Upon termination or expiration of the Global Gateway e4 Services, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, you shall either return to us or destroy the Software and the Documentation, and shall so certify to us in writing.

23.4.9. No other Licenses. Except as expressly provided above, no license for any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted hereunder.

23.4.10. Use of Transaction Data. As permitted by applicable law and regulations, we reserve the right to copy and distribute to third parties, any information associated with your use of the Software or your activities on the First Data Global Gateway e4.

23.5. Platform Matters.

23.5.1. Integration with Your Systems. While we provide Software to you, you acknowledge that the Software itself is insufficient to allow your Systems to function with the Platform. Programming, development and maintenance of your Systems and their functionality are your sole responsibility. You have the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make your Systems function correctly with the Platform and the payment services contemplated hereunder ("Integration"). You shall be responsible for all technical support for your Systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete the Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Section 23, you acknowledge that unless and until you complete the Integration, no services need be provided by us to you pursuant to Section, except as otherwise specifically provided in Section 23.5.2 below. In addition, you acknowledge and agree that, even if you have completed Integration, if you have not entered into a valid merchant processing agreement with an authorized bank card processor, you cannot receive payment processing services through the First Data Global Gateway e4.

23.5.2. Set-Up Assistance Services. Subject to Section 23.5.1 above, upon your request to us, and upon payment of any applicable fees, we will provide you with set-up services to assist with the Integration.

23.5.3. Shut Downs. We reserve the right, from time to time, without prior notice, to shut down and restart the Platform for maintenance and/or software upgrades for reasonable time periods of one minute or more.

23.5.4. Orders by Customers. You are solely responsible for accepting, processing, and filling any orders for purchases by your Customers, and for handling any inquiries arising therefrom. You shall use the highest standards in the industry in responding to complaints by Customers. We are not responsible or liable for any unauthorized access to your data or your Systems by any means or device.

23.6. Security of Information. We will use commercially reasonable efforts to maintain the security of the Software and the Platform. You will use commercially reasonable efforts to maintain the security of your Systems. Such steps by you will be taken at your sole cost and expense, and shall include, without limitation: (i) creating firewalls to protect against unauthorized access to your Systems by your employees, contractors, Customers, or by any other person; and (ii) implementing reasonable protective techniques suggested by us. You further agree that you will be bound by and comply with all of our and all Card Organization security rules and regulations as they now exist or as each may be amended or supplemented from time to time. Notwithstanding the foregoing, the parties recognize that there is no guarantee or absolute security of information that is communicated over the Internet.

23.7. Privacy. We have adopted an online Privacy Statement to inform individuals as to our online collection and use of personal information. You agree that, during the term of this Agreement, you will adequately communicate and

comply with an appropriate privacy policy explaining your online collection and use of the personal information of your Customers. Unless required by law, Card Organization rules, or done pursuant to this Agreement, you shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any customer's account information, transaction information, or other personal information to any third party. You shall store all data securely. We may advise potential users of the services that we have a relationship with you.

23.8. Audit Rights. Upon notice to you, we may audit your usage, records and security of the Software, your Customer's payment processing information, and the services provided hereunder to ensure (i) that you are using the Software and the services in full compliance with the provisions of this Section 23; (ii) that all applicable fees have been paid; (iii) that you are adhering to your Privacy Policy; and; (iv) that you are in full compliance with all applicable laws, regulations and rules (including but not limited to Card Organization rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

23.9. After the initial term of this Agreement, if your merchant account is determined to be inactive as determined in our sole discretion, we may cancel this Agreement without further notice. Inactivity will be determined by an extended period of time with no transactions processed by us on your behalf. In the event we close this Agreement for inactivity, the early termination penalty will not apply.

23.10. Indemnification. You shall indemnify, defend, and hold us, our subsidiaries and affiliates and our and their officers, directors, employees, shareholders, agents and attorneys from any Claim(s) arising from the conduct of your business, any transactions submitted through the First Data Global Gateway e4 hereunder for payment processing, any false or inaccurate representation made by you or the negligence, fraud, dishonesty or willful behavior of any of your employees or agents, or from your failure to strictly comply, in whole or in part, with any: (i) terms and conditions pursuant to this Agreement and any addenda hereto or Documentation; or (ii) applicable law, regulations or rules. Upon written notice from us to you, you shall immediately undertake the defense of such Claim by representatives of your own choosing, subject to our reasonable approval.

23.11. Limitation of Liability.

23.11.1. Processor is not liable for the merit and legitimacy of the orders forwarded by you. All liability for validity of orders remains with you. We are not responsible for any data entry errors, Customer misrepresentations, or reporting errors resulting from your actions. We shall not be liable to you or your Customer for the accuracy of the information provided by the First Data Global Gateway e4 or our Services.

23.11.2. In no event shall we be liable to you, or to any other person or entity, under this Section 23, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill.

23.11.3. Notwithstanding any provision in this Agreement to the contrary, in no event shall our liability under this Section 23 for all Claims arising under, or related to, this Section 23 exceed, in the aggregate (inclusive of any and all Claims made by you against us, whether related or unrelated), the lesser of: (i) the total amount of fees paid by you for the our Services during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$10,000.00.

23.11.4. Notwithstanding provisions set forth herein, we will not be liable for any Claims under this Agreement arising directly or indirectly from or otherwise concerning: (a) any termination, suspension, delay or disruption of service (including billing for a service) by the Internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Software, the services provided hereunder or the Internet, or any communications network, facility or equipment beyond our reasonable control, whether or not attributable to one or more common carriers or third party service providers; (c) any failed attempts by you or your Customers to access any Systems or to complete processing transactions; or (d) any failure to transmit, obtain or collect data from Customers or for human, machine or software errors or faulty or your or your Customer's erroneous input.

23.12. DISCLAIMER OF WARRANTIES. YOU ACKNOWLEDGE AND AGREE THAT THE USE OF THE GLOBAL GATEWAY e4SM OUR SERVICES AND THE SOFTWARE ARE AT YOUR SOLE RISK WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS ADDENDUM THE SOFTWARE, THE DOCUMENTATION, OUR PROCEDURES, THE SERVICES PROVIDED HEREUNDER, OR FROM PERFORMANCE BY US, INCLUDING, WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE, (B) ANY WARRANTIES OF NONINTERFERENCE OR NON-INFRINGEMENT; OR (C) ANY WARRANTIES THAT ANY PRODUCT OR SERVICE PROVIDED HEREUNDER (INCLUDING BUT NOT LIMITED TO THE SOFTWARE) WILL (1) MEET YOUR REQUIREMENTS; (2) OPERATE ACCORDING TO YOUR EXPECTATIONS; (3) PROVIDE ACCURATE DATA; OR (4) OPERATE UNINTERRUPTED OR ERROR FREE. ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED BY US AND WAIVED BY YOU. WE DO NOT WARRANT THAT ANY ERRORS WILL BE CORRECTED, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, ALL SOFTWARE AND SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. All decisions to reject any processing transaction or payment for your products or services are solely your responsibility.

23.13. Notices. You agree to notify us of any change in your name, type of business, or any other information required on your merchant processing application at least thirty (30) business days prior to the effective date of change. Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's address or number at such party's last known address or number, and shall be: (i) if sent by us, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered, regular mail or e-mail; or (ii) if sent by you, certified or registered mail, postage prepaid return receipt requested to 6101 Condor Drive, Moorpark, CA 93021. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission or e-mail; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.

23.14. Subcontractors. Processor may subcontract all or part of the Services using a variety of providers globally, but, notwithstanding any such subcontract, Processor shall remain fully responsible for performance of the Services, including ensuring the compliance of subcontractors with the terms of this Agreement applicable to such subcontractors.

24. Choice of Law; Venue; Waiver of Jury Trial; Limitation on Claims

24.1. Choice of Law. Our Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).

24.2. Venue. We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Suffolk County, New York.

24.3. Waiver of Jury Trial. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

24.4. Without limiting any other terms or conditions contained in this Agreement, you agree that any lawsuit or other action you may wish to bring against us to adjudicate claims arising under this Agreement must be commenced and filed by you within one (1) year of the date on which your claim first accrued, without regard to the date on which your claim was discovered. Any action that is not commenced and filed by you within such one (1) year time period shall be barred, without regard to any other limitations period set forth by law or statute.

24.5. You acknowledge that your processing activities in connection with any secondary location(s) requested by you shall be governed by the terms and conditions of this Agreement.

25. Other Terms

25.1. Force Majeure. No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a Person for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and

observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment of funds or from a Person shall not excuse the performance of your obligations to us under this Agreement.

25.2. Compliance with Laws. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. Without limiting the foregoing, you acknowledge and agree that "restricted transactions" as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulations GG ("Restricted Transactions") issued thereunder are prohibited from being processed through your Account or any relationship between you and the Bank. You represent and warrant that you will not submit such Restricted Transactions for processing through your Account. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control ("OFAC").

In the event we identify a suspected restricted transaction, we may block or otherwise prevent or prohibit such transaction, we may close the Account or end the relationship, and we may seek any other remedies available to us under this Agreement or otherwise.

25.3. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, if to you at your address appearing in the Application, or by electronic means, including but not limited to the e-mail address you have provided on the Application, and if to us at our address appearing in Section 40.4 of this Agreement, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing of when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to the Merchant's last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.

25.4. Headings. The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

25.5. Severability. The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

25.6. Entire Agreement; Waiver. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter thereof and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

25.7. Amendment. We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute a writing as required herein. This section 25.7 does not apply to fee changes, which are governed by Sections 5.5 and 5.6.

25.8. Third Party Beneficiaries. Our respective Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person or entity other than the parties any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

25.9. Card Organization Rules. The parties acknowledge that the Visa, MasterCard and Discover Card Organization Rules give Visa, MasterCard and Discover, certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard and Discover Cards and the Visa, MasterCard and Discover Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Card Organization Rules with respect to this Agreement's applicability to transactions involving such other Cards.

25.10. Publicity. Client may not use our logo, name, trademark, or service mark of Processor and/or Bank in any manner, including without limitation, in any advertisements, displays, or press releases without the prior written consent of Processor and Bank.

25.11. IRS Reporting. Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return with the IRS for each calendar year beginning January 1, 2011, reporting all payment card transactions and third party network transactions with merchants occurring in that calendar year. Accordingly, you will receive a Form 1099 reporting your gross transaction amounts for each calendar year beginning with transactions processed in calendar year 2011.

In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. We are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) you fail to provide your taxpayer identification number (TIN) to us, or (b) the IRS notifies us that the TIN (when matched with the name) provided by you is incorrect. Accordingly, to avoid backup withholding from your daily merchant funding amount, it is very important that you provide us with the correct name and TIN that you use when filing the tax return that includes the transactions for your business.

PLEASE NOTE THAT VARIOUS STATES MAY HAVE ADDITIONAL REPORTING / WITHHOLDING REQUIREMENTS.

B. OPERATING PROCEDURES

This part of the Program Guide (through Section 38) describes the procedures and methods for submitting Credit Card transactions for payment, obtaining Authorizations, responding to Chargebacks and Media Retrieval Requests, and other aspects of the operations of our services.

Processor is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of your Sales Drafts back to the thousands of institutions who issue the MasterCard,[®] Visa[®] and Discover Cards carried by your customers, as well as to the independent Card Issuers of American Express[®]/Optima,[®] and JCB.[®] The Operating Procedures contained in this part focus primarily on the MasterCard, Visa and Discover Card Organization Rules, and seek to provide you with the principles for a sound Card program; however, you should consult the Card Organization Rules for complete information and to ensure full compliance with them. They are designed to help you decrease your chargeback liability and train your employees. (In the event we provide Authorization, processing or settlement of transactions involving Cards other than MasterCard, Visa and Discover, you should also consult those independent Card Issuers' proprietary rules and regulations.)

The requirements set forth in these Operating Procedures will apply unless prohibited by law. You are responsible for following any additional or conflicting requirements imposed by your state or local jurisdiction.

26. MasterCard, Visa, Discover and American Express Card Acceptance

26.1. Card Descriptions. At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card. The name of the Card (e.g., Visa, MasterCard or Discover) should appear in bold letters on the Card. For all MasterCard and Visa Cards and some Discover Cards, the Card Issuer (e.g., XYZ Bank, etc.) should also appear in bold letters on the Card. The following is a description of the authorized Visa, MasterCard and Discover Card designs:

Visa: Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and the symbol "V." Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, the Classic and Preferred Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Visa has a new Card design which differs significantly from the previous description. "Card Acceptance and Chargeback Management Guidelines for Visa Merchants" (VRM 08.12.16). You may download the document free of charge from Visa's website at <http://www.visa.com/merchant> or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

Beginning May 2008, Visa issued a new card design for un-embossed Visa cards. Unlike embossed Visa cards with raised numbers, letters and symbols, the un-embossed card has a smooth, flat surface. Because of the un-embossed cards flat surface, it cannot be used for transactions that require a card imprint. Un-embossed cards can only be used by merchants who process with an electronic Point Of Sale Terminal. As a result, the bottom of the card bears the following note, "Electronic Use Only:"

MasterCard: MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Pursuant to an alliance with MasterCard, Diners Club Cards issued in the United States and Canada are being re-issued with a sixteen (16) digit account number the first two digits of which are now fifty-five (55) and with the MasterCard mark and hologram on the front of the Diners Club Card. These Diners Club Cards shall be accepted and processed in the same manner as MasterCard transactions. Diners Club International Cards that are issued outside the U.S. and Canada may be re-issued with the MasterCard mark on the back of the Card. These Diners Club Cards will have account numbers that are fourteen (14) digits, the first two digits or which are thirty-six (36). When these Diners Club Cards are used within the United States, Canada and other designated areas, they will be processed as MasterCard transactions. Beginning Jan 2006, MasterCard has a new Card design

significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features." You may download the document free of charge from MasterCard's website at <http://www.mastercardmerchant.com/us/merchant>. Both the old and new MasterCard Card designs will be circulating concurrently in the marketplace through the year 2010. Only MasterCard Cards fitting the old or new descriptions may be accepted.

Discover: All valid standard rectangular plastic Cards bearing the Discover Acceptance Mark or the Discover/NOVUS Acceptance Mark, as indicated below, include the following common characteristics and distinctive features.

- Card Numbers are composed of 16 digits and are displayed on the front of the Card.
- Card Numbers are clear and uniform in size and spacing within groupings.
- An embossed security character, displayed as a stylized "D," appears on the same line as the embossed "Member" since date or "Year Joined" date (if present) and the "Valid Thru" date. The embossed "Valid Thru" date, if present, appears in mm/yy format and indicates the last month in which the Card is valid. An overprint on the signature panel reads "Discover" or "Discover Network." On some Cards, the overprint may display the name of the Card (e.g., Discover, Discover 2GO, Discover Platinum).
- Cards manufactured before October 3, 2008, display the Discover three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water, and stars on a repetitive pattern background (the "Discover Hologram") on the front of the Card.
- The Discover Hologram reflects light and appears to move as the Card is rotated.
- All Cards display a magnetic stripe on the reverse side of the Card. Cards manufactured on or after October 3, 2008 feature a three-dimensional holographic design that is incorporated into the magnetic stripe. A series of distinct circular shapes will be visible across the length of the magnetic stripe, with blue glows between each shape. When the Card is rotated, the holographic design will reflect light and there will be apparent movement and color switching within the circular shape.
- Cards displaying either the Discover Hologram or the holographic magnetic stripe are valid after the effective dates indicated above, with the Discover Hologram eventually replaced by the holographic magnetic stripe for new Cards. Although both the Discover Hologram and the holographic magnetic stripe will each appear on Cards, valid Cards will not display both designs.
- Depending on the issuance date of the Card, the word "DISCOVER" will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
- The Card Number or the portion of the Card Number displayed on the signature panel on the back of the Card should match the number displayed on the front of the Card and appear in reverse indent printing.
- CID must be printed in a separate box to the right of the signature panel on the back of the Card.
- An overprint on the signature panel reads "Discover." On some cards, the overprint may display the name of the Card (i.e., Discover, Discover 2GO[®], Discover Platinum).
- A Discover Zip Indicator may appear on the back of a standard rectangular plastic Card indicating the Card can be used to conduct Contactless Card Transactions.
- Contactless payment devices that may be used to conduct contactless card transactions will display a contactless icon, including, the Discover[®] Zip[®] Indicator. A contactless card transaction for which track data is received by us with the authorization request and that otherwise complies with Card Organization requirements for contactless card transactions, other applicable requirements and the technical specifications will constitute a card present card transaction.

NOTE: Valid Cards may not always be rectangular in shape (e.g., Discover 2GO[®] Cards) and certain valid contactless payment devices approved by us for use in accessing card Accounts (e.g., radio frequency (RF) enabled cards, key fobs, and mobile commerce devices) and to conduct contactless card transactions may not display the features described above.

Prepaid Gift Card Security Features

The features described below are found on Prepaid Gift Cards; however, the placement of these features may vary:

- Depending on the issue date of the Card, the Discover Acceptance Mark or the Discover/NOVUS Acceptance Mark will appear on the front or back of the Card.
- The embossed, stylized "D" appears on the front of the Card.
- A valid expiration date is embossed on the front of the Card.
- Only the person whose name appears on an American Express Card is entitled to use it. Cards are not transferable.
- The signature on the back of the Card must match the Cardmember's signature on the Sales Draft, and must be the same name that appears on **Other Card Features for Cards with a Discover Acceptance Mark**.
- The front of the Card may display "Temporary Card," "Prepaid Card," "Gift Card," or "Electronic Use Only" Must be printed on the front or the back of the Card.

NOTE: Prepaid Gift Cards accepted at a limited, specific list of Merchants may but are not required to display Discover hologram and, may but are not required to bear the Discover Acceptance Mark.

Un-embossed Prepaid Cards display a printed Card number. The "Valid Thru" date and the Cardholder name may or may not be printed on the Card. The embossed "D" security character is not present. "Electronic Use Only" is printed on the front or the back of an un-embossed Card. Obtain an electronic Authorization Response using a POS device for un-embossed Prepaid Cards.

You are required to remain familiar with Discover Card designs and may reference the document, "Discover Security Features." You may download the document free of charge from Discover's website at <http://www.discovernetwork.com/fraudsecurity/fraud.html>.

American Express Card: Some Cards contain a holographic image on the front or the back of the plastic to determine authenticity. Not all American Express Cards have a holographic image.

- All American Express Card Numbers start with "37" or "34." The Card number appears embossed on the front of the Card. Embossing must be clear, and uniform in sizing and spacing. Some Cards also have the Card Number printed on the back of the Card in the signature panel. These numbers, plus the last four digits printed on the Sales Draft, must match.
- Pre-printed Card Identification (CID) Numbers must always appear above the Card Number on either the right or left edge of the Card.
- Only the person whose name appears on an American Express Card is entitled to use it. Cards are not transferable.
- The signature on the back of the Card must match the Cardmember's signature on the Sales Draft, and must be the same name that appears on the front of the Card. The signature panel must not be taped over, mutilated, erased or painted over.
- Some Cards also have a three digit Card Security Code (3CSC) number printed on the signature panel.
- Do not accept a card outside the valid from and to dates.

26.2. Effective/Expiration Dates. At the point of sale, the Card should be carefully examined for the effective (valid from) (if present) and expiration (valid thru) dates which are located on the face of the Card. The sale date must fall on or between these dates. Do not accept a Card prior to the effective date or after the expiration date. If the Card has expired, you cannot accept it for a Card sale unless you have verified through your Authorization Center that the Card is in good standing, otherwise, you are subject to a Chargeback and could be debited for the transaction.

26.3. Valid Signature. Check the back of the Card. Make sure that the signature panel has not been disfigured or tampered with in any fashion (an altered signature panel may appear discolored, glued or painted, or show erasure marks on the surface). The signature on the back of the Card must compare favorably with the signature on the Sales Draft. The Sales Draft must be signed by the Card presenter in the presence of your authorized representative (unless a Card Not Present Sale) and in the same format as the signature panel on the Card; e.g., Harry E. Jones should not be signed H.E. Jones. The signature panels of Visa, MasterCard and Discover Cards now have a 3-digit number (CVV 2/CVC 2/CID) printed on the panel known as the Card Validation Code.

Visa, MasterCard and Discover: If the signature panel on the Card is blank, in addition to requesting an Authorization, you must do all the following:

- Review positive identification bearing the Cardholder's signature (such as a passport or driver's license that has not expired) to validate the Cardholder's identity.
- Indicate the positive identification, including any serial number and expiration date, on the Credit Draft or Sales Draft; provided that you must effect PAN Truncation, and must not include the expiration date on the copy of

the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.

- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.

26.4. Users Other Than Cardholders. A Cardholder may not authorize another individual to use his/her Card for purchases. Be sure the signature on the Card matches with the one on the Sales Draft. Furthermore, any Card having two signatures on the back panel is invalid and any sale made with this Card can result in a Chargeback. For Cards bearing a photograph of the Cardholder, ensure that the Cardholder appears to be the person depicted in the picture which appears on the Card. If you have any questions, call the Voice Authorization Center and request to speak to a Code 10 operator.

26.5. Special Terms. If you limit refund/exchange terms or impose other specific conditions for Card sales, the words "No Exchange, No Refund," etc. must be clearly printed on the Sales Draft near or above the Cardholder's signature. The Cardholder's copy, as well as your copy, must clearly show this information.

During a liquidation and/or closure of any of your outlets, locations and/or businesses, you must post signs clearly visible to customers stating that "All Sales Are Final," and stamp the Sales Draft with a notice that "All Sales Are Final."

Generally do not give cash, check or in store credit refunds for Card sales. Visa allows for the following exclusions: a cash refund to the Cardholder for a small ticket transaction or a no signature required transaction, a cash refund, Credit, or other appropriate form of Credit to the recipient of a gift purchased as a Mail/Phone Order transaction, or a cash refund or in-store Credit for a Visa prepaid card transaction if the Cardholder states that the Visa prepaid card has been discarded. NOTE: A disclosure does not eliminate your liability for a Chargeback. Consumer protection laws and Card Organization Rules frequently allow the Cardholder to dispute these items notwithstanding such disclosures.

26.6. Delayed Delivery or Deposit Balance. In a delayed delivery transaction where a Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts (each completed fully as described in Section 28.1.), the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services.

Visa: For Visa transactions, you must obtain an Authorization if the cumulative total of both Sales Drafts exceeds the floor limit. You must obtain an Authorization for each Sales Draft on each transaction date. You must assign the separate Authorization numbers to each Sales Draft, respectively. You must note on such Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization dates and approval codes.

MasterCard: For MasterCard transactions, you must obtain one Authorization. You must note on both Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization date and approval code.

NOTE: For Visa and MasterCard transactions, if delivery is more than twenty-five (25) days after the original transaction date and the initial Authorization request, you should reauthorize the unprocessed portion of the transaction prior to delivery. For Discover transactions, the same rules apply if delivery is more than ninety (90) days after the original transaction date and initial Authorization request. If the transaction is declined, contact the Cardholder and request another form of payment. For example: On January 1, a Cardholder orders \$2,200 worth of furniture and you receive an Authorization for the full amount; however, only a \$200 deposit is processed. The above procedures are followed, with a \$2,000 balance remaining on the furniture; the \$2,000 transaction balance should be reauthorized.

Discover: For Discover transactions, you must label one Sales Draft "deposit" and the other "balance," as appropriate. You must obtain the "deposit" authorization before submitting the sales data for the "deposit" or the "balance" to us. If delivery of the merchandise or service purchased will occur more than ninety (90) calendar days after the "deposit" authorization, you must obtain a subsequent authorization for the "balance." In addition, you must complete Address Verification at the time of the "balance" authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the "balance" to us for processing until the merchandise/service purchased has been completely delivered.

American Express: For American Express Card transactions, you must clearly disclose your intent and obtain written consent from the Cardmember to perform a delayed delivery transaction before you request an Authorization. You must obtain a separate Authorization Approval for each delayed delivery transaction on their respective charge dates and clearly indicate on each record that the charge is either for the deposit or for the balance of the transaction. You must submit the delayed delivery transaction record for the balance of the

purchase only after the items have been shipped, provided or services rendered. For deposits, submission must be on the date the Cardmember agreed to pay for the deposit for the purchase. For balances, submission must be on the date the items are shipped, provided or services rendered. You must submit and Authorize each delayed delivery transaction under the same Merchant Number and treat deposits on the Card no differently than you treat deposits on all other payment products.

26.7. Recurring Transaction and Preauthorized Order Regulations. If you process recurring transactions and charge a Cardholder's account periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder's name, address, account number and expiration date, the transaction amounts, the frequency of recurring charges and the duration of time for which the Cardholder's permission is granted. For Discover transactions, the approval must also include the total amount of recurring charges to be billed to the Cardholder's account, including taxes and tips and your Merchant Number.

If the recurring transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder's account. You may not complete a recurring transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for Authorization has been denied.

If we or you have terminated this Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of this Agreement.

You must obtain an Authorization for each transaction and write "Recurring Transaction" (or "P.O." for MasterCard transactions) on the Sales Draft in lieu of the Cardholder's signature. A positive authorization response for one recurring transaction Card Sale is not a guarantee that any future recurring transaction authorization request will be approved or paid.

For all recurring transactions, you should submit the 3-digit Card Validation Code number with the first authorization request, but not subsequent authorization requests. Discover Card Organization Rules specifically require that you follow this Card Validation Code procedure for Discover recurring transactions. Effective October 31, 2011, merchants that offer "recurring billing" must offer their American Express customers the option to receive written notification for the recurring transaction(s) at least (10) ten days prior to submitting, or any time the charge amount exceeds a maximum amount that has been set by the Cardholder.

Also, for Discover recurring transactions, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.

For American Express recurring transactions you should periodically verify with Cardmembers that their information (e.g., Card Number, expiration date, billing address) is still accurate. This will improve the likelihood of obtaining an approval to an Authorization request.

All recurring transactions or preauthorized orders may not include partial payments for goods or services purchased in a single transaction.

You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.

If you process recurring payment transactions, the Recurring Payment Indicator must be included in each Authorization request, and as applicable, each Batch submission entry. Penalties can be assessed by the Card Organizations for failure to use the Recurring Payment Indicator.

26.8. Certain Rules and Requirements. The following rules are requirements strictly enforced by Visa, MasterCard and Discover:

- Your minimum Credit Card acceptance amount cannot exceed \$10.00. Such minimum amount must be established to all Credit Cards regardless of Card Issuer or Card brands. Unless you are a federal government entity or institution of higher learning, you may not establish a maximum amount as a condition for accepting a Card, except that for Discover transactions, you may limit the maximum amount a Discover Cardholder may spend if, and only if, you have not received a positive authorization response from the Issuer. Setting a minimum transaction amount limit for Debit Cards (PIN Debit or Non-PIN Debit) is prohibited.
- You cannot establish any special conditions for accepting a Card.
- You may provide a discount/incentive for a consumer to pay with cash, check, Credit Card, Debit Card, etc., however, you must clearly and conspicuously disclose the discount to consumers. Also, you must offer the discount to all

consumers and you cannot discriminate based upon Card brand or Card Issuer. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 26.9.

- You may direct customers to a particular brand or type of general purpose card or a particular form of payment. U.S. merchants may also encourage customers who initially present a Visa Card to use a payment card with a different network brand, a different type of payment card or a different form of payment.

U.S. merchants may engage in any of the following:

- You may offer a discount or rebate, including an immediate discount or rebate at the point of sale;
- You may offer a free or discounted product, service or enhanced service
- You may offer an incentive, encouragement, or benefit;
- You may express a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- You may promote a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to a customer;
- You may communicate to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment; or
- You may engage in any other practices substantially equivalent to these.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address including zip code; or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery-required transactions, or as otherwise permitted by applicable law. Any information that is supplied by the Cardholder must not be in plain view when mailed.
- Any tax required to be collected must be included in the total transaction amount and not collected in cash.
- You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible.
- You cannot accept a Visa Consumer Credit Card or commercial Visa Product, issued by a U.S. Issuer to collect or refinance an existing debt.
- You cannot submit a transaction or sale that has been previously charged back.
- You must create a Sales Draft or Credit Draft for each Card transaction and deliver at least one copy of the Sales Draft or Credit Draft to the Cardholder.
- You cannot submit a transaction or sale to cover a dishonored check.
- If you accept Card checks, your Card check acceptance policy must treat the acceptance of checks from all payment card brands that you accept equally. (e.g., if you accept MasterCard, Visa and Discover, your check acceptance policy must treat checks for all three payment card brands equally). You should handle these Card checks like any other personal check drawn upon a bank in the United States.
- Failure to comply with any of the Card Organization Rules may result in fines or penalties.
- You will inform the Cardholder that you are responsible for the Card transaction including your goods and services and for related customer service, dispute resolution and performance of the terms and conditions of the transaction.

26.9. Card Acceptance. If you have indicated either in the Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 26.9 will apply:

26.9.1. You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit or Debit Cards issued by MasterCard, Visa or Discover so long as you accept any type of MasterCard, Visa or Discover branded Card.

26.9.2. While many Debit Cards include markings indicating debit (such as "Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney), many Debit Cards may not include such markings. It will be your responsibility to determine at

the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of ranges of numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Card Organizations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables.

26.9.3. To the extent that you inadvertently or intentionally accept a transaction other than the type anticipated for your account, such transaction will downgrade to a higher cost interchange and you will be billed the difference in interchange (a Non-Qualified Interchange Fee), plus a Non-Qualified Surcharge (see Section 5.1 and Glossary).

26.9.4. Based upon your choice to accept only the Card types indicated in the Application, you must remove from your premises any existing signage indicating that you accept all Visa, MasterCard or Discover Cards and use approved specific signage reflecting your policy of accepting only Non-PIN Debit or Credit Cards.

26.9.5. Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Services.

26.10. Deposits of Principals. Owners, partners, officers and employees of your business establishment, and the guarantors who signed the Application, are prohibited from submitting Sales Drafts or Credit Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary course of your business. Such use in violation of this Section 26.10 is deemed a cash advance, and cash advances are prohibited.

26.11. Merchants in the Lodging Industry.

26.11.1. Generally. There are additional rules and requirements that apply to merchants in the lodging industry for practices including, but not limited to, Guaranteed Reservations and charges for no shows, advance deposits, over-bookings, and priority checkout. If you are a merchant in the lodging industry, you must contact us for these additional rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

26.11.2. Lodging Service Services Programs. In the event you are a lodging merchant and wish to participate in Visa's and/or MasterCard's lodging services programs, please contact your sales representative or relationship manager for details and the appropriate MasterCard and Visa requirements.

26.11.3. Written Confirmation of Guaranteed Reservations. You must provide the Cardholder with written confirmation of a guaranteed reservation. The confirmation must contain:

- Cardholder's name as it appears on the Card, if present.
- Card Number, truncated where required by applicable law to you or us and Card expiration date if present, unless prohibited by applicable law to you or us.
- Reservation confirmation number.
- Anticipated arrival date and length of stay.
- The cancellation policy in its entirety, inclusive of the date and time the cancellation privileges expire.
- Any other pertinent details related to the reserved accommodations.

26.11.4. Cancellation of Guaranteed Reservations. If a Cardholder requests a cancellation in accordance with Merchant's cancellation policy and specified time frames, Merchant must provide the Cardholder with a cancellation number and instructions to retain a record of it. If a Card holder requests a written confirmation of the cancellation, Merchant must forward this confirmation within three (3) Business Days of the Cardholder's request. The cancellation confirmation must contain: Cardholder's reference that charges were placed on the Card, if applicable, or a guarantee that a "no-show" charge will not be placed on the Card.

- Cardholder's name as it appears on the Card, if present.
- Card Number, truncated as required by applicable law to you or us.
- Card expiration date, if present, unless prohibited by applicable law to you or us.
- Reservation cancellation number.
- Date of cancellation.
- The name of the Merchant's employee that processed the cancellation.
- Any other pertinent information related to the reserved accommodations.

26.12. Customer Activated Terminals and Self-Service Terminals. Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions you must contact us for approval and further instructions, rules and requirements that apply to CAT and Self-Service Terminal transactions. Failure to do so could result in additional charges or termination of this Agreement.

26.13. Displays and Advertising. You must prominently display appropriate Visa, MasterCard, Discover, American Express, and, if applicable, other Card Organization decals and program Marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Card Organization Rules. You may not indicate that Visa, MasterCard, Discover, American Express, or any other Card Organization endorses your goods or services.

Your right to use the program Marks of the Card Organizations terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Card Organization terminates (e.g., if your right to accept Discover Cards terminates, you are no longer permitted to use Discover Program Marks), (ii) delivery of notice by us or the respective Card Organization to you of the termination of the right to use the program Mark(s) for that Card Organization, or (iii) termination of the license to use the program marks by the respective Card Organization to us.

26.13.1. Discover Sublicense to Use Discover Program Marks. You are prohibited from using the Discover Program Marks, as defined below, other than as expressly authorized in writing by us. "Discover Program Marks" means the brands, emblems, trademarks and/or logos that identify Discover Cards, including, without limitation, Diners Club International Cards. Additionally, you shall not use the Discover Program Marks other than as a part of the display of decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to you by us or otherwise approved in advance in writing by us.

You may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing.

You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks. You shall not assign to any third party any of the rights to use the Program Marks.

26.13.2. American Express sublicense to Use American Express Marks. You must not use our Marks in any way that injures or diminishes the goodwill associated with that Mark, nor (without our prior written consent) indicate that we endorse your goods or services. You shall only use our Marks as reasonably necessary to perform your obligations under the Agreement and shall cease using our Marks upon termination of the Agreement. The guidelines listed below apply to the Merchant's use of the American Express "Blue Box" logo.

- The "Blue Box" logo must appear on all point of purchase materials and signs.
- The space around the "Blue Box" must equal at least 1/3 the size of the box.
- The "Blue Box" logo minimum size is 3/8" and 1/2" is the preferred size.
- Always spell out American Express.
- A minimum distance of 1-1/2 times the size of the "Blue Box" must be allowed between the "Blue Box" logo and another Mark.

26.14. Cash Payments by and Cash Disbursements to Cardholders. You must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the right of the Issuer to receive such payments. You may not make any cash disbursements or cash advances to a Cardholder as part of a Card transaction unless you are a financial institution with express authorization in writing in advance by Servicers. For Discover, cash advances in authorized jurisdictions other than the United States may be conducted in an originating currency provided that cash advances may be subject to dispute and/or Acquirer fees.

26.15. Discover Cash Over Transactions. Cash Over transactions are not available for MasterCard or Visa transactions. You may issue Cash Over in connection with a Discover Card sale provided that you comply with the provisions of this Agreement including the following requirements:

- You must deliver to us a single authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount of the Card sale. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.
- The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.

- No minimum purchase is required for you to offer Cash Over to a Discover Cardholder, provided that some portion of the total Card sale must be attributable to the purchase of goods or services.
- The maximum amount of cash that you may issue as Cash Over is \$100.00. (Cash Over may not be available in certain markets. Contact us for further information.)

26.16. Telecommunication Transactions. Telecommunication Card Sales occur when a telephone service provider is paid directly using a Card for individual local or long-distance telephone calls. (NOTE: pre-paid telephone service cards are not and do not give rise to Telecommunication Card Sales). **Prior to conducting Telecommunication transactions you must contact us for approval and further instructions, rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.**

27. Suspect Transactions

If the appearance of the Card being presented or the behavior of the person presenting the Card is suspicious in nature, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions. While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a Chargeback:

Ask yourself, does the Customer:

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (e.g., does not care how much an item costs, the size, etc.)?
- make purchases substantially greater than your usual customer (e.g., your average transaction is \$60, but this transaction is for \$360)?
- insist on taking the merchandise immediately (e.g., no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?
- appear to be purchasing an unusual amount of expensive items or the same items?
- take an unusual amount of time to sign the Sales Draft, or look at the back of the Card as he signs?
- talk fast or carry on a conversation to distract you from checking the signature?
- take the Card from a pocket instead of a wallet?
- repeatedly come back, in a short amount of time or right before closing time, to make additional purchases?
- cause an unusual, sudden increase in the number and average sales transactions over a one- to three-day period?
- tell you he has been having some problems with his Issuer and request that you call a number (that he provides) for a "special" handling or Authorization?
- have a previous history of disputed charges?
- place orders to be shipped to an address other than the billing address, or use anonymous/free email domains?
- place orders sent to zip codes or countries where you show a history of fraudulent claims?

Does the Card:

- have characters the same size, height, style and all within alignment?
- appear to be re-embossed (the original numbers or letters may be detected on the back of the Card)?
- have a damaged hologram?
- have a Magnetic Stripe on the back on the Card?
- have an altered signature panel (e.g., appear discolored, glued or painted, or show erasure marks on the surface)?
- have "valid from" (effective) and "valid thru" (expiration) dates consistent with the sale date?

If you use an electronic terminal and swipe the Card, make sure the account number displayed on the terminal and/or the Sales Draft matches the number on the Card. If you cannot or do not verify the account number and accept the sale, you are subject to a Chargeback and could be debited for the amount of the transaction. **IF THE NUMBERS DO NOT MATCH, DO NOT ACCEPT THE CARD AS A FORM OF PAYMENT, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPED CARD NUMBER MAY BE RECEIVED.**

Fraud-Prone Merchandise Tips:

- Gift Cards, jewelry, video, stereo, computer and camera equipment, shoes and men's clothing are typically fraud-prone because they can easily be resold.

- Be suspicious of high dollar amounts and transactions with more than one fraud-prone item, e.g., two VCRs, three gold chains, etc.

If you suspect fraud:

- Call the Voice Authorization Center and ask to speak to a Code 10 operator.
- If the terminal does not display the Card number, call the POS Help Desk for terminal assistance.

REMEMBER: AN AUTHORIZATION CODE ONLY INDICATES THE AVAILABILITY OF A CARDHOLDER'S CREDIT AT THE TIME OF THE TRANSACTION. IT DOES NOT WARRANT THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER. IF PROPER PROCEDURES ARE NOT FOLLOWED AT THE TIME OF THE TRANSACTION, YOU ARE SUBJECT TO A CHARGEBACK AND YOUR ACCOUNT MAY BE DEBITED FOR THE AMOUNT OF THE TRANSACTION.

28. Completion of Sales Drafts and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide a copy of it or a transaction receipt or copy of the Draft to the Cardholder at the time the Card transaction is completed.

28.1. Information Required. All of the following information must be contained on a single page document constituting a Sales Draft or Credit Draft:

- Cardholder's account number must appear on the Sales Draft or Credit Draft in the manner required by applicable law and Card Organization Rules. **NOTE: The copy of the Sales Draft or Credit Draft you provide to a Cardholder must not include the Cardholder's expiration date or any more than the last four digits of the Cardholder's Card number. Some states have similar requirements that also apply to the Sales Drafts or Credit Drafts you retain. MasterCard requires that Card expiration dates be excluded from the Sales Drafts or Credit Drafts your business retains. You are solely responsible to determine the Card account number truncation requirements and Card expiration date exclusion requirements for your state/ jurisdiction;**
- Clear imprint of the Card. Whenever the term "imprint" is used it refers to the process of using a manual imprinting machine to make an impression of the Card on a Sales Draft; it does not include the printout from a printer attached to an electronic device. If you use an electronic device (e.g., authorization/ draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. **HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD. IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. FAILURE TO FOLLOW THESE PROCEDURES WILL PREVENT YOU FROM DEFENDING A TRANSACTION IN THE EVENT THAT IT IS CHARGED BACK UNDER A CLAIM THAT THE RIGHTFUL CARDHOLDER DID NOT AUTHORIZE THE PURCHASE. ENTERING INFORMATION INTO A TERMINAL MANUALLY WILL NOT PREVENT THIS TYPE OF CHARGEBACK. FOR MAIL/TELEPHONE/INTERNET AND OTHER CARD NOT PRESENT ORDERS SEE SECTION 28.2.;**
- Cardholder's signature. However, eligible merchants participating in MasterCard's Quick Payment Service Program, Visa Easy Payment Program, American Express No Signature Program, Discover No Signature Program, and/or certain Discover transactions (see note below) are not required to obtain the Cardholder's signature under certain conditions set forth by each program;
- Date of the transaction
- Amount of the transaction (including the approved currency of the sale);
- Description of the goods and/or services involved in the transaction (if there are too many items, combine them into one description; e.g. "clothing" instead of "one pair of pants, one shirt"). Do not carry information onto a second Sales Draft;
- Description of your merchandise return and Credit/refund policy;
- A valid authorization code; and
- Merchant's Doing Business As ("D/B/A") name and location (city and state required) and Merchant Account Number.
- When imprinting Sales Drafts, do not alter the Cardholder account number, circle or underline any information on the Sales Draft or alter a Sales Draft in any way after the transaction has been completed and signed. Stray marks and other alterations on a Sales Draft may render it electronically unscannable, unreadable or illegible. This may result in a Chargeback or summary adjustment to your account.

- For Discover sales using a paper Sales Draft (as opposed to Electronic Draft Capture), the paper sales draft must also contain the initials of your representative or employee that conducted the transaction. For Discover Credits, the Credit Draft must contain the signature of your authorized representative or employee that conducted the transaction.
- Discover Card Sales in an amount more than \$25.00 including sales taxes, tip, and/or Cash Over amount are not eligible for treatment as No Signature Required Card Sales and you may lose a dispute of such a Card Sale if the Merchant fails to obtain the Cardholder's Signature on the Sales Draft.
- Eligible merchants participating in No Signature Program, Quick Payment Service and/or Small Ticket are only required to provide the Cardholder with the completed Sales Draft when requested by the Cardholder.
- **NOTE:** For Visa, MasterCard and Discover transactions, if you are a merchant operating under certain merchant category codes approved by Visa, MasterCard and Discover, you are not required to obtain the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is \$25.00 or less.
- This Section shall apply only to receipts that include a Card account number that are electronically printed and shall not apply to transactions in which the sole means of recording the Card account number is by handwriting or by an imprint or copy of the Card.

28.2. Mail/Telephone/Internet (Ecommerce) Orders and Other Card Not Present Sales. You may only engage in mail/ telephone/ Internet orders provided they do not exceed the percentage of your total payment Card volume reflected on your Application. Failure to adhere to this requirement may result in cancellation of your Agreement. Merchants conducting Internet transactions using MasterCard or Visa Cards must have special codes (an "Electronic Commerce Indicator") added to their authorization and settlement records. Discover does not use an Electronic Commerce Indicator. Failure to register as a merchant conducting Internet transactions can result in fines imposed by the Card Organizations.

Mail, Telephone, Internet and other Card Not Present transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/Internet or other Card Not Present transaction. The following procedures, while they will not eliminate Chargebacks, are useful in reducing them and should be followed by you:

- Obtain the expiration date of Card.
- On the Sales Draft, clearly print the Cardholder's account number; effective and expiration dates; date of transaction; description of the goods and services; amount of the transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; authorization code; and merchant's name and address (city and state required); provided, that you must effect PAN Truncation, and must not include the expiration date, on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.
- For mail orders, write "MO"; for telephone orders, write "TO" on the Cardholder's signature line.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit telephone and mail order transactions.
- You should utilize the Address Verification Service for all Card Not Present Transactions (see note below). Address Verification is specifically required for all Discover Card Not Present Transactions, and **if you do not receive a positive match through AVS, you may not process the Discover Card Not Present Transaction. If you do not have AVS, contact us immediately.**
- You should obtain the 3-digit Card Validation Code number and include it with each authorization request. Discover Card Organization Rules specifically require that you submit the Card Validation Code with the authorization request for all Discover Card Not Present Transactions.
- For telephone orders, it is recommended that written verification of the sale be requested from the Cardholder (sent by mail or fax).
- You may not submit a transaction for processing until after the merchandise has been shipped or the service has been provided to the customer. (The Card Organizations will permit the immediate billing of merchandise manufactured to the customer's specifications [i.e., special/custom orders] provided the Cardholder has been advised of the billing details.)
- You should provide a copy of the Sales Draft to the Cardholder at the time of delivery. You must also obtain proof of delivery of the goods or services

to the address designated by the Cardholder (i.e., by getting a signature of the Cardholder or person designated by the Cardholder through the delivery carrier). If the Cardholder visits one of your locations to receive the goods or services purchased, obtain an imprint of the card and the Cardholder's signature.

- Notify the Cardholder of delivery time frames and special handling and/or of cancellation policies. Merchandise shipping dates must be within seven (7) days of the date Authorization was obtained. If, after the order has been taken, additional delays will be incurred (e.g., out of stock), notify the Cardholder and reauthorize the transaction.
- You may not require a Cardholder to complete a postcard or other document that displays the Cardholder's account number in clear view when mailed.
- If you accept orders via the Internet, your web site must include the following information in a prominent manner:
 - Complete description of the goods or services offered
 - Description of your merchandise return and Credit/refund policy;
 - Customer service contact, including email address and/or telephone number;
 - Transaction currency (U.S. dollars, unless permission is otherwise received from Servicers);
 - Any applicable export or legal restrictions;
 - Delivery policy;
 - Consumer data privacy policy;
 - A description of the transaction security used on your website; and
 - The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.
 - Address of merchant including country.
 - Cancellation policy; and
 - Date any free trial period ends.
- You may not accept Card Account Numbers through Electronic Mail over the Internet.

NOTE: Address Verification Service ("AVS"), does not guarantee against Chargebacks, but used properly it assists in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the Issuer. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an Authorization and will provide a separate response. A transaction may not match addresses when submitted for AVS and still receive an Authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

28.2.1. Discover Protocol for Internet Transactions. Each Internet Discover Card transaction accepted by you and submitted to us shall comply with Discover standards, including, without limitation, Discover standards governing the formatting, transmission and encryption of data, referred to as the "designated protocol." You shall accept only those Internet Discover Card transactions that are encrypted in accordance with the designated protocol. As of the date of these Operating Procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL). We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon thirty (30) days advance written notice. You shall not accept any Internet Discover Card transaction unless the transaction is sent by means of a browser which supports the designated protocol.

28.3. Customer Service Telephone Numbers for Card types which are funded by individual non-bank Card Organizations include:

American Express/ESA or Direct	1-800-528-5200
American Express OnePoint	1-800-451-5817
JCB, International	1-800-366-4522
TeleCheck	1-800-366-1054
Voyager	1-800-987-6591
WEX	1-800-492-0669 (24 hours)

29. Data Security

THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA. PLEASE REVIEW CAREFULLY AS FAILURE TO COMPLY CAN RESULT IN SUBSTANTIAL FINES AND LIABILITIES FOR UNAUTHORIZED DISCLOSURE AS WELL AS TERMINATION OF THIS AGREEMENT.

29.1. Payment Card Industry Data Security Standards (PCI DSS). Visa, MasterCard, Discover and JCB and American Express aligned data security requirements to create a global standard for the protection of Cardholder data. The resulting Payment Card Industry Data Security Standards (PCI DSS) defines the requirements with which all entities that store, process, or transmit payment card data must comply. PCI DSS is the name used to identify those common data security requirements. The Cardholder Information Security Program (CISP) is Visa USA's data security program, the Site Data Protection (SDP) program is MasterCard's data security program and Discover Information Security and Compliance (DISC) is Discover's data security program, and the Data Security Operating Policy (DSOP) is American Express' data security program, each based on the PCI DSS and industry aligned validation requirements. PCI DSS PCI compliance validation is focused on Merchant Equipment (as defined below) where Cardholder data is processed, stored, or transmitted, including:

- All external connections into your network (i.e., employee remote access, third party access for processing, and maintenance).
- All connections to and from the Authorization and settlement environment (i.e., connections for employee access or for devices such as firewalls, and routers); and
- Any data repository outside of the Authorization and settlement environment.

For the purposes of this Section 29, "Merchant Equipment" means any and all equipment you use in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and software, systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by you, Merchant Providers or other Persons used by you.

The Card Organizations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Services under this Agreement for any actual or suspected data security compromise. You agree that you will not request any Authorizations, submit any Sales Drafts or Credit Drafts until you have read and understood the PCI DSS, CISP, SDP and DISC for which you acknowledge we have provided you sufficient information to obtain, and you will be deemed to have done so upon our receipt of your request or submission of any Authorizations, Sales Drafts or Credit Drafts.

You must comply with the data security requirements described in this Section 29.1, including without limitation, PCI DSS, SDP, CISP, DISC and DSOP, and any additional Card Organization requirements applicable to payment applications and PIN transactions.

Detailed information about PCI DSS, can be found at the PCI DSS Counsel's website: www.pcisecuritystandards.org

Detailed information about Visa's CISP program can be found at Visa's CISP website: www.visa.com/cisp

Detailed information about MasterCard's SDP program can be found at the MasterCard SDP website: www.mastercard.com/sdp

Detailed information about DISC can be found at Discover DISC website: <http://www.discovernetwork.com/fraudsecurity/disc.html>

Detailed information about American Express Data Security Operating Policy (DSOP) website can be found at: <https://www.americanexpress.com/datasecurity>

29.2. Data Security Requirements. You must comply with the data security requirements shown below:

- You must install and maintain a secure network firewall to protect data across public networks.
- You must protect stored data and data sent across networks using methods indicated in the PCI DSS.
- You must use and regularly update anti-virus software and keep security patches up-to-date.
- You must restrict access to data by business "need to know," assign a unique ID to each person with computer access to data and track access to data by unique ID.
- You must not use vendor-supplied defaults for system passwords and other security parameters.
- You must regularly test security systems and processes.

- You must maintain a policy that addresses information security for employees and contractors.
- You must restrict physical access to Cardholder information.
- You may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- You cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four digit code printed on the front of an American Express Card) after final transaction authorization.
- You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.
- You must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- You must keep all systems and Media containing Card account, Cardholder or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.
- You must use only services and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations.

29.3. Compliance Audits. You may be subject to ongoing validation of your compliance with PCI DSS standards. Furthermore, we retain the right to conduct an audit at your expense, performed by us or a third party designated by us to verify your compliance, or that of your agents or Merchant Providers, with security procedures and these Operating Procedures. In any event, upon request, you shall provide us with copies of any and all reports developed by your forensic vendor(s), and you shall ensure that we have direct communication access with such forensic vendor(s).

29.4. Immediate Notice Required. In the event that transaction data is known or suspected of having been accessed or retrieved by any unauthorized Person, you must contact us immediately and in no event more than 24 hours after becoming aware of such activity.

29.5. Investigation. You must, at your own expense (i) perform or cause to be performed an independent investigation, including a forensics analysis performed by a certified forensic vendor acceptable to us and the Card Organizations in accordance with Card Organization standards, of any data security breach of Card or transaction data, (ii) provide a copy of the certified forensic vendor's final report regarding the incident to us and the Card Organizations, (iii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iv) cooperate with us in the investigation and resolution of any security breach. Notwithstanding the foregoing, if required by the Card Organization, we will engage a forensic vendor approved by a Card Organization at your expense. You must cooperate with the forensic vendor so that it may immediately conduct an examination of Merchant Equipment, and your Merchant Providers' procedures and records and issue a written report of its findings.

29.6. Required Information for Discover Security Breaches. For security breaches involving Discover transactions and/or track data, you must provide us and/or Discover with the following information: (i) the date of breach; (ii) details concerning the data compromised (e.g., account numbers and expiration dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) your security personnel contacts; (v) the name of any person (including law enforcement) assisting you with your investigation of such breach; and (vi) any other information which we reasonably request from you concerning such breach, including forensics reports. You shall provide such information as soon as practicable, and the items listed in (i)-(v) shall be provided to us in any event within 48 hours of your initial notification to us of the breach.

29.7. Merchant Providers. The data security standards set forth in this Section 29 also apply to Merchant Providers. Before you engage any Merchant Provider, you must provide to us in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. You acknowledge and agree that you will not use, or provide Card holder data access to, any Merchant Provider until you receive our approval and, if required, confirmation of our registration of that Merchant Provider with applicable Card Organizations. You must ensure that you and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Card Organization Rules,

including without limitation, those requiring security of Cardholder data. You may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules. You are responsible for all our costs and expenses associated with our review, approval, certification (and recertification as may be required by us or the Card Organization Rules) and registration of any Merchant Providers.

Your use of the Services, equipment, software, systems, materials, supplies or resources of third parties regarding your Card transactions processing, including, without limitation, Merchant Providers and any third party lessors or licensors, will not affect your obligations under this Agreement to us which will apply to the same extent as if you had not used them.

We have no liability or responsibility to you or others regarding these third parties, even if we referred them to you. These third parties are your agents, and you are solely responsible for (i) determining whether they can meet your needs and standards, (ii) their actions, inactions and compliance with the terms of this Agreement and the Card Organization Rules and (iii) any and all fees, costs, expenses and other obligations owed to them by you or owed by them to us or to Card Organizations.

29.8. Noncompliance Fees. If we have not received receipt of your validation of compliance with your PCI DSS standards within the first 120 days of the date of the Agreement, you will be charged a monthly Non-Validation of PCI Compliance fee as set forth in the Application or as otherwise communicated to you, for the period beginning upon expiration of the 120 day period, until such time as you are compliant or this Agreement is terminated, whichever comes first. This monthly Non-Validation of PCI Compliance fee is in addition to any other fees for which you are responsible related to your failure to be compliant as related hereunder.

29.9. Costs. If you or a Merchant Provider (or other Person used by you) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information (together, "**Compromised Data Events**") and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, "**Data Compromise Losses**"). In addition to the foregoing, you must also pay us promptly for all expenses and claims made by Issuers against us alleging your responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations.

30. Authorizations

Each authorization request you submit to us must fully comply with the applicable provisions of this Agreement. Submission of an authorization request that does not fully comply may result in assessment of additional fees to you, a declined authorization response or a Chargeback to you.

You must obtain an Authorization Approval Codes from us (or as authorized pursuant to Section 30.4) for all transactions. A positive authorization response is good for seven (7) days for American Express Non T&E merchants and for thirty (30) days for American Express T&E Merchants. For true paper merchants for MasterCard and Visa transactions the Authorization remains valid for five (5) days. A positive authorization response for Discover transactions remains valid for ninety (90) days. A positive authorization response for Discover Network transactions remains valid for ninety (90) days. A positive authorization response for American Express Non T&E merchants are good for seven (7) days, American Express T&E Merchants are good for thirty (30) days. Failure to settle within these timeframes, may result in a late presentment Chargeback.

Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to Authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 30.4. If a Cardholder or another service provider provides you with either an authorization number or with a telephone number for obtaining Authorizations, the Authorization Approval Code you receive may not be valid. Even if the transaction is initially processed and funded, it may be charged back at a later date. Also, if you receive a purported Authorization Approval Code from someone other than us, we will not have the supporting records and will be unable to verify that you received the authorization if that is later questioned in a Chargeback.

An Authorization Approval Code only indicates the availability of Credit on an account at the time the Authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback.

If you obtain Address Verification, you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction can receive an Authorization Approval Code from the Card Issuer even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

If you receive a Referral response to an attempted Authorization, you may not submit the transaction without calling for and receiving a voice authorization. After receiving a Referral response you may not attempt another Authorization on the same Card through your POS Terminal.

If you fail to obtain an Authorization Approval Code or if you submit a Card transaction after receiving a decline (even if a subsequent Authorization attempt results in an Authorization Approval Code), your transaction may result in a Chargeback and may be assessed fines or fees by the Card Organizations for which you will be responsible. These currently range from \$25 to \$150 per transaction. To avoid these costs and related Chargebacks, always obtain an Authorization Approval Code directly from your terminal before submitting a transaction for settlement.

For Cards other than MasterCard, Visa and Discover (e.g., American Express, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each.

You may not attempt to obtain multiple Authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt multi-transactions and/or multi-Authorizations, you are subject to a Chargeback, Card Organization Fines and/or cancellation of your Agreement.

For MasterCard transactions, automated fuel dispensers must ensure that completion messages are submitted for MasterCard's Card within 60 minutes of the Authorization.

30.1. Card Not Present Transactions. You should obtain the 3-digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet sales). However, for recurring transaction Authorizations you should submit the Card Validation Code with the first authorization request only, and not with subsequent recurring transaction authorization requests (See Section 26.7). **NOTE: For each Card Not Present Discover transaction, you must also verify the name and billing address of the Discover Cardholder using the Address Verification System (AVS), and if you do not receive a positive match, do not process the Discover Card Not Present transaction.**

For Gateway merchants, it is your responsibility to ensure AVS/CVV2/CVC2 settings are appropriate to deter fraud for your particular type of business.

30.2. Authorization via Telephone (Other than Terminal/Electronic Device Users).

- Call your designated voice authorization toll free number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.
- If advised to pick up a Card, use reasonable and peaceful means to do so, and do not take any action that will alarm or embarrass the Card presenter. You will bear all responsibility for claims, liabilities, costs and expenses as a result of any action by you, your employees, vendors or agents, that attempt to retain a Card without the Issuer's direct request or failure to use reasonable, lawful means in retaining or attempting to retain the Card. Forward the Card to: Attn: Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the Card.
- On occasion, the Authorization Center will ask you to obtain identification from the Cardholder before issuing an approval code. If you are instructed to do so, clearly write the appropriate identification source and numbers in the space provided on the Sales Draft unless otherwise prohibited by law.
- If the sale is declined, please remember that our operators are only relaying a message from the Issuer. The fact that a sale has been declined should not be interpreted as a reflection of the Cardholder's creditworthiness. The Cardholder should be instructed to call the Issuer.

30.3. Authorization via Electronic Device.

- If you use an electronic terminal to obtain Authorization Approval Code, all sales should be authorized through this equipment. Authorizations through other methods will result in additional charges to you.
- If your terminal malfunctions, refer to your Quick Reference Guide, if necessary, or call the POS Help Desk. The problem will either be corrected promptly or may require terminal programming or replacement. During the period in which your terminal is not functioning, remember to check it periodically since most terminal problems are temporary in nature and are quickly corrected.
- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.
- Until the terminal becomes operable, you must call your designated voice authorization toll free number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual Imprinter machine. Failure to obtain an Authorization Approval Code and to imprint these transactions could result in a chargeback to your account.

30.4. Third Party Authorization System. If you have contracted with another authorization network to obtain Credit Card authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network.

We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation received.

IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks (see Section 5.1).

If you use a third party authorization network, you must also comply with Section 29.7.

Call the following for other Card types:

American Express/ESA or Direct	1-800-528-5200
JCB, International	1-800-522-8788
TeleCheck	1-800-366-5010
Voyager	1-800-987-6589
WEX	1-800-842-0071

Available 24 hours/day; 7 days/week

All approved sales authorized in this manner must be entered manually as "post authorization" transactions into the terminal, once the terminal becomes operational. All credit transactions must be entered into the terminal for data capture. You may be subject to a Chargeback if you receive a Referral and subsequently receive an approval. To reduce the risk of such a Chargeback, the Card should be imprinted using a manual Imprinter machine. (For specific procedures on Electronic Data Capture, refer to the Terminal Operating Instructions/Users Guide.) If the terminal malfunctions for more than twenty-four (24) hours, contact Customer Service for further instructions on processing your transactions.

30.5. Automated Dispensing Machines. Records must be produced for all transactions whose origin and data capture are automated dispensing machines or Limited Amount Terminals. Records should include the Cardholder account number, merchant's name, terminal location, transaction date and amount.

30.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants. If you are a business engaged in providing travel and/or entertainment services (e.g., car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-authorization." You must comply with the following general procedures:

- A hotel, motel, or car rental merchant may obtain an estimated Visa, MasterCard or Discover Authorization at the time of check-in.
- Restaurants must not add an estimated tip amount to the authorization request beyond the value of the goods provided, or services rendered, plus any applicable tax.
- You must notify the Cardholder of the dollar amount you intend to "Pre-Authorize."
- If the customer decides to use another form of payment (e.g., cash, check, etc.) you must promptly call the Voice Authorization Response Unit to delete the authorization hold. Provide the Cardholder's account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed Sales Draft for the exact amount and a new authorization code for that amount must be obtained.
- **VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.**
- If you receive a decline on a transaction, you must wait twenty four (24) hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a chargeback and a fine imposed by the Card Organizations.
- Hotels, motels, and car rental merchants are allowed up to a 15% variance above the amount authorized. If the final amount charged to the Cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.
- Pre-Authorization for certain establishments, are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount "preauthorized" by more than 20%, you must authorize the additional amount. Estimating the Authorization amount to include a tip is prohibited. The authorization request should include only the amount associated with the bill presented to the consumer.
- You should obtain an Authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must secure a positive authorization for the additional amount. **NOTE:** Subsequent Authorizations should only be for the additional amount of total charges and not include amounts already authorized.
- The estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.
- If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.
- You do not need to obtain a final Authorization if the total sum of charges (the final amount) does not exceed 120% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

30.7. Discover Procedure for Request for Cancellation of Authorization.

If a Discover Card sale is cancelled or the amount of the transaction changes following your receipt of Authorization for the sale, you must call your Authorization Center directly and request a cancellation of the Authorization. An Authorization may be cancelled at any time within fifteen (15) days of your receipt of the Authorization, but must be cancelled before the sales data relating to the transaction is submitted to us, after which the Authorization cannot be changed. For an Authorization cancellation, you must provide us with the following information, in this order:

- The Discover Merchant Number used in the Authorization;
- The Card number;
- The original amount of the Authorization being cancelled;
- The new amount of the total transaction (if any);
- The original authorization code for the Authorization being cancelled;
- The expiration date of the Card; and
- A brief reason for the Authorization cancellation.

30.8. Partial Authorization and Authorization Reversal. Partial Authorization provides an alternative to a declined transaction by permitting a Card Issuer to return an Authorization approval for a partial amount, an amount less than the transaction amount requested by the merchant when the available

card balance is not sufficient to approve the transaction in full. The Cardholder is able to use up the remaining funds on the Card and select another form of payment (i.e. another payment Card, cash, check) for the remaining balance of the transaction. For MasterCard transactions, partial authorization is optional for batch authorized e-commerce transactions, mail order, telephone order transactions and recurring payment transactions. For Discover transactions, partial Authorization support is optional for Card Not Present transactions. If you support partial Authorizations, a partial Authorization indicator must be included in each Authorization request.

An Authorization reversal must be submitted if the Authorization is no longer needed a partial amount of the total authorized is submitted for the settled transaction, or the Cardholder elects not to the purchase. The transaction sent for settlement must be no more than the amount approved in the partial Authorization response. In the event that you wish to support the partial Authorization functionality, you must contact us for additional rules and requirements.

31. Submission/Deposit of Sales Drafts and Credit Drafts

31.1. Submission of Sales for Merchants Other Than Your Business.

You may present for payment only valid charges that arise from a transaction between a bona fide Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

31.1.1. Factoring. Factoring is considered merchant fraud and strictly prohibited. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions transacted by another business. If you submit Sales Drafts on behalf of another Person, you will suffer any losses associated with the disputes of any such Sales Draft and/or transaction. Also if any fraud is involved, you could face criminal prosecution.

31.2. Timeliness. In order to qualify for the lowest interchange Discount Rate, all Sales and Credit Drafts must be properly completed and submitted daily. If you have not received payment for submitted Sales Drafts after one (1) week from your normal payment date, contact Customer Service. Late Submission of Sales or Credit Drafts may result in increased interchange rates or fees or in a Chargeback to you.

31.3. Electronic Merchants: Daily Batching Requirements & Media

Submission. Batches must be transmitted to us by the time indicated on the Additional Important Information Page in Section 40.2 of the Agreement in order to be processed on the date of transmission. Additionally, if you deposit via magnetic tape, electronic transmissions, or Electronic Data Capture terminal and have contracted to send the actual Sales Drafts and Credit Drafts to us for imaging and retrieval, the Sales Drafts the Media must be batched daily by register/terminal following the procedures below. Failure to do so may result in a processing fee and/or a Chargeback due to our inability to retrieve the Media as requested by the Issuer.

- A register/terminal Batch header form must be filled out for each Batch of Media.
- The Batch header must be imprinted with your Merchant Identification Card, and all areas completed properly (i.e., Batch number, date, amount, number of items, etc.).
- The Batch/deposit total must match to the settled/reconciled amount displayed on the terminal upon closing the Batch.
- Any discrepancies between the actual Media and electronic display must be reconciled and corrected before storing the Media (for merchants who contract to hold their Media) or before sending us the copies of the deposit. Otherwise, transactions may appear to be a new Submission and may be manually keyed (causing duplicate billing to Cardholders and resulting in Chargebacks) or we may not be able to retrieve an item when requested by the Issuer.
- It is your responsibility to ensure that the actual Media is batched correctly and, depending on the terms of your Agreement, either stored at your location or sent to Processor. (In some cases, the actual Media is sent daily to your head office, and forwarded to Processor for imaging.)
- **You must confirm that your equipment has transmitted its Batches to us at least once daily.** Even if your equipment is designed or programmed to close and submit Batches without your intervention, it is ultimately your responsibility to confirm that the Batches have been transmitted to us for processing.

32. Settlement

Except as otherwise set forth in this Program Guide, your funds for MasterCard/ Visa/ Discover transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/ Visa/ Discover transactions will ordinarily be processed and transferred to the Federal Reserve within two (2) Business Days from the time a Batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

If you have been classified by Discover as having a Discover Direct Strategic Relationship with Discover, we will not acquire your Discover transactions and they will be subject to your agreement with Discover.

You acknowledge and agree that if we had not agreed or do not acquire transactions for any Card type (i) we have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) you will pursue directly with the related Card Organization all claims and disputes regarding those transactions. You agree to pay us per item processing, authorization and other fees in the Application for any non-acquired transaction services you receive from us.

33. Refunds/Exchanges (Credits)

33.1. Refunds.

- You must promptly complete and submit a Credit Draft for the total amount of the Credit which must include the following information:
 - The account number and expiration date;
 - The Cardholder's name;
 - Your name, city, state and Merchant Account Number;
 - A description of the goods or services;
 - The transaction date of the Credit;
 - The total amount of the Credit; and
 - For Discover transactions, the approved currency used and the signature of your authorized representative or employee.
- You cannot process a Credit transaction that does not correspond to a refund on a previous transaction on the original Sales Draft.
- Full refunds must be for the exact dollar amount of the original transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.) The refund amount may not be for more than the original Card sale amount.
- All dollar amounts and other handwritten information must be clearly written. (Stray marks on the Credit Draft will render it unscannable/illegible.)
- Do not circle or underline any information on the Credit Draft.
- Imprint the Credit Draft with the same Card used by the Cardholder to make the original purchase when applicable. You should not credit an account that differs from the account used for the original transaction.
- Never give cash or check Credit refunds for Card sales.
- Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a credit within five (5) calendar days may result in a Chargeback.
- Authorization is not required for Credits.
- You cannot intentionally submit a sale and an offsetting Credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.
- You are responsible for paying all refunds submitted to us on your merchant account. We assume no responsibility for verifying any Credits or refunds.
- Do not process a Credit transaction once a Chargeback is received. Credits issued after a Chargeback has been received may not be recoverable and the merchant would be financially responsible for the Credit as well as the Chargeback.
- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

33.2. Exchanges.

- No additional paperwork is necessary for an even exchange. Just follow your standard company policy.

- For an uneven exchange, complete a Credit Draft (follow the procedures outlined in Section 33.1.) for the total amount of only the merchandise returned. The Cardholder's account will be credited for that amount. Then, complete a new Sales Draft for the total amount of any new merchandise purchased.

34. Retention of Records For Retrievals and Chargebacks

34.1. Retain Legible Copies.

For MasterCard and Visa: You must securely retain legible copies of all Sales and Credit Drafts or any other transaction records for a period of eighteen (18) months from the date of each transaction and a period of five (5) years for the retention of healthcare Sales Drafts and Credit Drafts. The Sales Draft you retain must comply with all requirements (see Section 28.1).

For Discover: You must securely retain legible copies of all Sales and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep images or other copies of Sales Drafts for no less than three (3) years from the date of the Discover transaction.

For American Express: You must submit the Credit to American Express directly, or through your Processor, for payment. You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for 24 months from the date you submitted the corresponding Credit to us. You must also provide a copy of the Credit Draft to the Cardmember or as required by applicable law, truncate the Card Number and do not print the Card's expiration date on copies of Credit Drafts delivered to the Cardmember.

34.2. Provide Sales and Credit Drafts. You must provide all Sales Drafts and Credit Drafts or other transaction records requested by us within the shortest time limits established by Card Organization Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

35. Chargebacks, Retrievals and Other Debits

35.1. Chargebacks.

35.1.1. Generally. Both the Cardholder and the Issuer have the right to question or dispute a transaction. If such questions or disputes are not resolved, a Chargeback may occur. A Chargeback is a Card transaction that is returned to us by the Card Issuer. As a result, we will debit your Settlement Account or settlement funds for the amount of each Chargeback. It is strongly recommended that, whenever possible, you contact the Cardholder directly to resolve a disputed transaction or Chargeback, unless the dispute involves a Discover Cardholder, in which case Discover rules and regulations expressly prohibit you from contacting the Discover Cardholder regarding the dispute. You are responsible for all Chargebacks, our Chargeback fees, and related costs arising from your transactions.

35.1.2. Transaction Documentation Requests. In some cases, before a Chargeback is initiated, the Issuer will request a copy of the Sales Draft via a request for transaction documentation. We will forward the request to you. You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Issuer. If you fail to timely respond, we will so notify the Issuer and a Chargeback may result. Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8-1/2 x 11-inch paper (only one (1) Sales Draft per page).
- Write the 'case number' from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, or mail/phone/internet order form, or other form of receipt.
- If a credit transaction has been processed, a copy of the Credit Draft is also required.
- Letters are not acceptable substitutes for Sales Drafts.
- Fax or mail legible copies of the Sales Draft(s) to the fax number or mail address provided on the request form.
- If you fax your response, please set your fax machine to print your fax number and name on the documents that you send. We can use this information to determine where the documentation received originated from should additional research be required.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the documentation transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a Chargeback for "non-receipt" for which there is no recourse.

A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if a Transaction Documentation Request results from a difference in the following information on the Sales Draft and the transmitted record: merchant name or an incorrect city, state, foreign country and/or transaction date.

35.1.3. Chargeback Process. Regardless of whether you respond to a Transaction Documentation Request, a Chargeback may be debited to your Settlement Account for numerous reasons (see below). If the Card Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. **Due to the short time requirements imposed by MasterCard, Visa and Discover and American Express, it is extremely important that you respond to a Chargeback notification and Transaction Documentation Request within the time frame set forth in the notification.** Do not process a credit transaction once a Chargeback is received; the Issuer will Credit the Cardholder's account. Credits issued after a Chargeback has been received, may not be recoverable and you may be financially responsible for the Credit as well as the Chargeback. If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representation of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representation and/or reversal is ultimately contingent upon the Card Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representation or reversal is not a guarantee that the Chargeback has been resolved in your favor.

For Visa Chargebacks: If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor, and any other applicable fees and charges imposed by Visa, as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For MasterCard Chargebacks: If we reverse the Chargeback and represent the transaction to the Card Issuer, at its sole discretion, may elect to resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard currently charges a \$250 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor, and any other charges imposed by MasterCard, as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For Discover Chargebacks: If Discover rejects our representation request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover. Discover charges fees for representation requests and an arbitration fee as published in their fee schedule.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, Discover and American Express rules and regulations, reversal rights are forfeited. Our only alternative, for Visa and MasterCard non-fraud Chargeback reason codes, is to attempt a "good faith collection" from the Issuer on your behalf. This process can take up to six (6) months and must meet the Issuer's criteria (e.g., at or above a set dollar amount. Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Issuers normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us.

For American Express Chargebacks: You may request a Chargeback reversal if the Chargeback was applied in error. In order for us to consider your request, you must have responded to the original inquiry within the specified timeframe, request the Chargeback reversal no later than 20 days after the date of the Chargeback, and provide all supporting documentation to substantiate the error.

NOTE: Discover and American Express do not offer good faith collection for Acquirers.

MasterCard and Visa Card Organization Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover rules and regulations, however, prohibit you and/or us

from contacting the Cardholder directly regarding dispute(s) or any other matter, except as required for acceptance of Discover transactions, and require you and/or us to submit any responses to dispute notices directly to Discover.

Due to Card Organization Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required time frame.
- Whenever possible, contact the Cardholder directly to resolve the dispute, unless the dispute relates to a Discover Cardholder, in which case direct contact with the Discover Cardholder regarding the dispute is prohibited by Discover Card Organization Rules.
- If you have any questions, call Customer Service.

35.1.4. Chargeback Reasons. The following section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding, we have combined like Chargebacks into six groupings. We have included recommendations on how to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

1. **Authorization Issues:** Proper Authorization procedures were not followed and valid Authorization was not obtained.

The following scenarios could cause an Authorization Related Chargeback to occur:

- Authorization not obtained.
- Authorization was declined.
- Transaction processed with an expired card and Authorization was not obtained.
- Transaction was processed with an invalid account number and Authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

To reduce your risk of receiving an Authorization Related Chargeback:

- Obtain valid Authorization on the day of the transaction.
- Card Present Transactions-Authorization must be obtained on the transaction date for the amount settled.
- Card Not Present Transactions-Authorization must be obtained on the transaction date for the amount settled. However, if merchandise is being shipped, Authorization must be obtained within seven calendar days of the transaction ship date.
- If a declined response is received, then request another form of payment from the Cardholder.
- If a Referral response is received, then follow proper voice procedures to obtain a valid Authorization and obtain an imprint of the card
- "Pick-up" response indicates that the Issuer is requesting for the card to be retained and returned back to them. The Credit Card should not be accepted for payment. Additionally, you can choose to retain the Credit Card and return it to the Acquirer for a reward.
- Merchants should not exceed any predetermined thresholds for specific terminal types as specified by each Card Organization.

2. **Cancellations and Returns:** Credit was not processed properly or the Cardholder has cancelled and/or returned items.

The following scenarios could cause a Cancellation and Return Related Chargeback to occur:

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for cancelled recurring transaction.
- Credit transaction was not processed.

To reduce your risk of receiving a Cancellation and Return Related Chargeback:

- Issue Credit to the Cardholder for the same account as the purchase in a timely manner.
 - Do not issue Credit to the Cardholder in the form of cash, check or instore/merchandise Credit as we may not be able to recoup your funds in the event the transaction is charged back.
 - Ensure customers are fully aware of the conditions for recurring transactions. Cancel recurring billings as soon as notification is received from the Cardholder or as a Chargeback, and Issue a Credit as needed to the Cardholder in a timely manner.
 - Pre-notify the Cardholder of billings within 10 days (Domestic) and 15 (International) prior to billing, allowing the Cardholder time to cancel the transaction.
 - Provide proper disclosure of your refund policy for returned/cancelled merchandise, or services to the Cardholder at the time of transaction.
 - Card present, Cardholder signed the Sales Draft containing disclosure.
 - If applicable, the words "NO EXCHANGE, NO REFUND," etc. must be clearly printed in ¼ inch lettering on the Sales Draft near or above the Cardholder signature.
 - Ecommerce, provide disclosure on website on same page as check out showing Cardholder must click to accept prior to completion.
 - Card Not Present, provide cancellation policy at the time of the transaction.
 - Provide cancellation numbers to Cardholder's when lodging services are cancelled.
 - Ensure delivery of the merchandise or services ordered to the Cardholder.
3. **Fraud:** Transactions that the Cardholder or authorized user claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as "high risk."

The following scenarios could cause a Fraud Related Chargeback to occur:

- Multiple transactions were completed with a single card without the Cardholder's permission.
- Counterfeit card was utilized and proper acceptance procedures were not followed.
- Authorization was obtained; however, full track data was not transmitted.
- Cardholder states that they did not authorize or participate in the transaction.

NOTE: Visa Fraud Chargebacks: Chargeback representment rights do not exist if you failed to fulfill a retrieval request and/or provide a sales slip that contains all required data elements. To preserve Chargeback representment rights, respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the required timeframe that is specified by the retrieval request.

To reduce your risk of receiving a Fraud Related Chargeback:

Card Present Transactions:

- Pre-notify the Cardholder of billings within 10 days.
- American Express customers have the option to receive written notification of the recurring transaction at least (10) days prior to submitting, or any time the charge amount exceeds a maximum amount that has been set by the Cardholder.
- Obtain an Authorization for all transactions.
- If you are utilizing an electronic device to capture Card information, swipe all Card transactions through your electronic authorization device to capture Cardholder information and ensure the displayed Cardholder number matches the number on the Card.
- If you are unable to swipe the Card or if a Referral response is received, imprint the card using a valid imprinting device that will capture the embossed Card and merchant information. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted draft (transaction date, dollar amount, authorization code and merchandise description) along with the Cardholder signature.

NOTE: Do not imprint on the back of a signed Sales Draft. The imprint must be on the transaction document that contains all transaction elements to prove the Card was present at the time of the transaction.

- Obtain the Cardholder signature for all transactions; ensure the signature on the Sales Draft matches the signature on the back of the Card.
- Process all transaction one time and do not Batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

Card Not Present Transactions:

- Participation in recommended Fraud Prevention Tools.
 - Verified by Visa Program.
 - MasterCard SecureCode.
 - Address Verification Services.
 - CVV2, CVC2 and CID Verification.
- NOTE:** While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept the Card for the transaction.
- Ensure you ship to the AVS confirmed address (bill to and ship to should match).
 - Obtain Authorization for all transactions.
 - Ensure merchant descriptor matches the name of the business and is displayed correctly on the Cardholder statement.
 - Ensure descriptor includes correct business address and a valid customer service number.
 - American Express offers fraud mitigation tools for both Card Present and Card Not Present transactions to help verify that a charge is valid. These tools help you mitigate the risk of fraud at the point of sale, but are not a guarantee that a charge is in fact valid or bona fide, or that you will not be subject to a Chargeback. For optimal use of the tools, please visit American Express' Fraud Prevention Information at: www.americanexpress.com/fraudinfo.

4. Cardholder Disputes: Merchandise or services not received by the Cardholder, Merchandise defective or not as described.

The following scenarios could cause a Cardholder Dispute Chargeback to occur:

- Services were not provided or merchandise was not received by the Cardholder.
- The Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective damaged or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.

To reduce your risk of receiving a Cardholder Dispute Related Chargeback:

- Provide Services or Merchandise as agreed upon and described to the Cardholder; clearly indicate the expected delivery date on the sales receipt or invoice.
- Contact the Cardholder in writing if the merchandise or service cannot be provided or is delayed, and offer the Cardholder the option to cancel if your internal policies allow.
- In the event that the Cardholder received defective merchandise or the merchandise received was not as described; resolve the issue with the Cardholder at first contact.
- If the merchandise is being picked up by the Cardholder, have them sign for the merchandise after inspection that it was received in good condition.
- Do not charge the Cardholder until the merchandise has been shipped, ship according to the agreed upon terms and obtain signed Proof of Delivery from the Cardholder.
- If unable to provide services or merchandise, issue credit to Cardholder in a timely manner.
- Accept only one form of payment per transaction and ensure the Cardholder is only billed once per transaction.
- Do not bill Cardholder for loss, theft or damages unless authorized by the Cardholder.

5. Processing Errors: Error was made when transaction was processed or it was billed incorrectly.

The following scenarios could cause a Processing Error Chargeback to occur:

- Transaction was not deposited within the Card Organization specified timeframe.
- Cardholder was issue a Credit Draft; however, the transaction was processed as a sale.
- Transaction was to be processed in a currency other than the currency used to settle the transaction.
- The account number or transaction amount utilized in the transaction was incorrectly entered.
- A single transaction was processed more than once to the Cardholders account.
- Cardholder initially presented card as payment for the transaction; however Cardholder decided to use an alternate form of payment.
- Limited amount or self-service terminal transaction was processed for an amount which is over the pre- determined limit.

To reduce your risk of receiving a Processing Error Related Chargeback:

- Process all transactions within the Card Organization specified timeframes.
 - Ensure all transactions are processed accurately and only one time.
- NOTE:** In the event that a transaction was processed more than once; immediately issue voids, transaction reversals or Credits.
- Ensure that credit transaction receipts are processed as Credits and sale transaction receipts are processed as sales.
 - Ensure all transactions received a valid Authorization Approval Code prior to processing the transaction and obtain a legible magnetic swipe or imprinted Sales Draft that is signed.
 - Do not alter transaction documentation or make any adjustments unless the Cardholder has been contacted and agrees to any modifications of the transaction amount.
 - Ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the pre-determined limits.

6. Non Receipt of Information: Failure to Respond to a Retrieval Request or Cardholder Does Not Recognize.

The following scenarios could cause Non Receipt of Information Chargeback to occur:

- The transaction documentation was not provided to fulfill the retrieval request.
- The retrieval request was fulfilled with an illegible Sales Draft or was an invalid fulfillment (Incorrect sales draft or sales draft did not contain required information which may include signature).
- The Cardholder does not recognize or is unfamiliar with the transaction due to the merchant name and/or location not matching the name and/or location where the transaction took place.

To reduce your risk of receiving a Non Receipt of Information Related Chargeback:

- Provide a clear and legible copy of the Sales Draft that contains all required data elements within the required timeframe that is specified on the retrieval request.
- Ensure that the most recognizable merchant name, location and/or customer service phone number is provided on all transactions.
- Retain copies of all transaction documentation for the required timeframe that is specified by each Card Organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

35.2. Other Debits. We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Operating Procedures pursuant to Section 2:

- Card Organization fees, charges, fines, penalties, registration fees, or other assessments including any fees levied against us or any amount for which you are obligated to indemnify us.

- Currency conversion was incorrectly calculated. **NOTE: For Discover transactions, you are not permitted to convert from your local Discover approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.**
- Discount Rate not previously charged.
- Reversal of deposit posted to your account in error.
- Debit for Summary Adjustment not previously posted.
- Reversal of Credit for deposit previously posted.
- Debit for Chargeback never posted to your account.
- Debit for EDC Batch error fee.
- Card Organization Merchant Chargeback/fraud monitoring fees –excessive Chargeback handling fee.
- Failure of transaction to meet Member Controller Authorization Service (“MCAS”) – Cardholder account number on exception file.
- Original transaction currency (foreign) not provided.
- Travel Voucher exceeds maximum value.
- Debit and/or fee for investigation and/or Chargeback costs related to our termination of this Agreement, or for costs related to our collection activities in an amount no less than \$100.00.
- Costs arising from replacement or damage to equipment rented.
- Payment of current or past due amounts for any equipment purchase, rental or lease.
- Incorrect merchant descriptor (name and/or city, state) submitted.
- Incorrect transaction date submitted.
- Shipping and handling interchange fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account.

35.3. Summary (Deposit) Adjustments/Electronic Rejects. Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and Credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express).
- The dollar amount is unreadable/ illegible.
- The Cardholder's account number is unreadable/ illegible.
- Duplicate Sales Draft submitted.
- Card number is incorrect /incomplete.
- Summary indicated Credits, but no Credits were submitted.

35.4. Disputing Other Debits and Summary Adjustments. In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder account number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Approval Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales Draft or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.

36. Account Maintenance

36.1. Change of Settlement Account Number. If you change the Settlement Account in which you receive the proceeds of your transactions, you must call Customer Service or your Relationship Manager immediately. If you accept payment types other than Visa, MasterCard and Discover (such as the American Express Card, and TeleCheck Services), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change.

36.2. Change in Your Legal Name or Structure. You must call Customer Service or your Relationship Manager and request a new Agreement.

36.3. Change in Company DBA Name, Address or Telephone/ Facsimile Number. To change your company or location DBA name, address (or e-mail address), or telephone/facsimile number, you must send the request in writing to the address on your statement.

36.4. Other Change(s) in Merchant Profile. You must immediately notify us of any change to the information on file with us in your merchant profile, including: (i) any new lines or types of business; (ii) change in ownership; (iii) the opening, closing or liquidation of business or any location; (iv) change in Card processing method (i.e., paper Sales Drafts to POS Device); (v) voluntary or involuntary party to a bankruptcy case; (vi) entry into a loan or other agreement with a third party that seeks to affect this Merchant Agreement; and/or (vii) change from a business that exclusively conducts card-present retail sales to one that accepts Card sales by mail, telephone or Internet transactions. We retain the right to terminate this Agreement if you fail to notify us of any change to the information in your merchant profile.

36.5. Charges for Changes to Account Maintenance. You may be charged for any changes referenced in this Section or any other changes requested by you or otherwise necessary related to account maintenance.

37. Card Organization Monitoring

MasterCard, Visa and Discover and American Express have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive Credits, reported fraud and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or engage in practices that could circumvent such monitoring programs or submit suspicious transactions as identified by a Card Organization or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) incremental Chargebacks and/or increased fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

38. Supplies

Placing Orders.

- To order additional supplies, call Customer Service when you have two months' inventory left. We will ship you an adequate amount of supplies. The amount of supplies (based on usage) on hand should not exceed a three to six-month supply.
- In an EMERGENCY, please contact Customer Service using the number provided on the last page of this Program Guide. If supplies are sent via an express delivery service, the delivery charges will be debited to your account.
- You are responsible for unauthorized use of sales/credit and summary Media. We recommended that you store all supplies in a safe location.
- You may be charged for supplies and applicable shipping and handling charges.

As used in this Program Guide, the following terms mean as follows:

Acquirer: Bank in the case of MasterCard, Visa and certain debit transactions or Processor in the case of Discover transactions that acquire Card sale transactions from merchants such as yourself.

Address Verification: A service provided through which the merchant verifies the Cardholder's address, in whole or in part. Primarily used by Mail/Telephone/Internet order merchants. Address verification is intended to deter fraudulent transactions. However, it is not a guarantee that a transaction is valid.

Affiliate: A person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this agreement.

Agreement: The Agreements among Client, Processor and Bank contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

Annualized Sales Volume: Annualized Sales Volume is the greater of (1) the sum of the monthly Sales Volume since the account was activated, divided by the number of months the account has been active, and then multiplied by twelve (12), or (2) the estimated annual Sales Volume listed in the Agreement. An active account is defined as an account having a Sales Volume of fifty dollars (\$50.00) or greater for that month. If the Client has three months or less of Sales Volume, the "Annualized Sales Volume" is the estimated annual Sales Volume provided by the Client in the Agreement.

Application: See Merchant Processing Application.

Authorization: Approval by, or on behalf of, the Card Issuer to validate a transaction. An authorization indicates only the availability of the Cardholder's Credit Limit or funds at the time the Authorization is requested.

Authorization Approval Code: A number issued to a participating merchant by the Authorization Center which confirms the authorization for a sale or service.

Authorization Center: A department that electronically communicates a merchant's request for authorization on Credit Card transactions to the Cardholder's bank and transmits such authorization to the merchant via electronic equipment or by voice authorization.

Authorization / EDC Fees: A fee that applies to all Visa, MasterCard and Discover Card approvals (pre-authorizations, authorizations & authorization reversals), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

Bank: The bank identified on the Application signed by you.

Bankruptcy Code: Title 11 of the United States Code, as amended from time to time.

Batch: A single Submission to us of a group of transactions (sales and credits) for settlement. A Batch usually represents a day's worth of transactions.

Business Day: Monday through Friday, excluding Bank holidays.

Buyer Initiated Payment (BIP): A payment that occurs when a cardholding business approves an invoice (or invoices) and submits an electronic payment instruction causing funds to be deposited directly into a their supplier's merchant account.

Card: See either Credit Card or Debit Card.

Cardholder: Means the Person whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.

Card Not Present Sale / Transaction: A Transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

Card Organization: Any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide ("MasterCard"), Visa U.S.A., Inc. ("Visa"), DFS Services LLC ("Discover") and any applicable debit networks.

Card Organization Rules: The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

Card Validation Codes: A three-digit value printed in the signature panel of most Cards and a four-digit value printed in the front of an American Express Card. Visa's Card Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; Discover's Card Validation Code is known as a CID. Card Validation Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

Card Verification Value (CVV) / Card Validation Code (CVC): A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

Cash Benefits: An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

Cash Over Transaction: Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

Chargeback: A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

Check Warranty: A service provided through a merchant's POS equipment which guarantees payment up to a defined limit, provided the merchant follows proper steps in accepting the check.

Check Verification: A service provided in which a merchant accesses a national negative file database through its terminal/register to verify or authorize that a person has no outstanding bad check complaints at any of the member merchants. This is not a guarantee of payment to the merchant.

Client: The party identified as "Client" on the Application. The words "Subscriber," "you," "your" and "Customer" refer to Client. Also, sometimes referred to as "Merchant."

Credit: A refund or price adjustment given for a previous purchase transaction.

Credit Card: A device bearing a valid Organization Mark of Visa, MasterCard, Discover or American Express and authorizing the Cardholder to buy goods or services on Credit and, to the extent the Schedules so provide, a valid device authorizing the Cardholder to buy goods or services on Credit and issued by any other Card Organizations specified on such Schedules.

Credit Draft: A document evidencing the return of merchandise by a Cardholder to a Client, or other refund or price adjustment made by the Client to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and applicable law.

Credit Limit: The credit line set by the Issuer for the Cardholder's Credit Card account.

Customer Activated Terminal (CAT): A Magnetic Stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service) that is not an ATM.

Debit Card: See either PIN Debit Card or Non-PIN Debit Card.

Dial-Up Terminal: An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

Discount Rate: A percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 5.1.

Electronic Benefit Transfer (EBT): An Electronic Benefits Transfer system used to deliver certain government delivered benefits, including without limitation Cash Benefits and FNS, SNAP and WIC Benefits, to EBT customers.

Electronic Draft Capture (EDC): A process which allows a merchant's Dial-Up Terminal to receive Authorization and capture transactions, and electronically transmit them to the Processor. This eliminates the need to submit paper for processing.

Factoring: The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business. Factoring is prohibited.

General Terms: Section of the Program Guide, including any amendments or modifications.

Gross: When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or Credits.

Imprinter: A manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

Issuer: The financial institution or Card Organization which has issued a Card to a Person.

Limited Amount Terminal: A customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic stripe telephones.

Magnetic Stripe: A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

Marks: Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

Media: The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.)

Merchant Account Number (Merchant Number): A number that numerically identifies each merchant location, outlet, or line of business to the Processor for accounting and billing purposes.

Merchant Identification Card: A plastic embossed card supplied to each merchant to be used for imprinting information to be submitted with each batch of paper Sales Drafts. Embossed data includes Merchant Account Number, name and sometimes merchant ID code and terminal number.

Merchant Processing Application ("MPA"): The Merchant Processing Application and Agreement executed by Client, which is one of the documents comprising the Agreement.

Merchant Provider: Any Person engaged by you to provide services to you involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

Non-Bank Services: Products and/or Services for which Bank is not responsible, or a party to, including American Express, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck Check Services, Gift Card Services and Transactions involving Cards from other Non-Bank Card Organizations, such as Voyager Fleet Systems, Inc., WEX, Inc. and WEX Bank, Discover, Leasing, TransArmor, Fraud Services, Wireless, Global Gateway e4 Services, and other items as may be indicated in this Program Guide.

Non-PIN Debit Card: A device with either a Visa, MasterCard or Discover Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

Non-Qualified Interchange Fee: The difference between the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the more costly interchange level at which the transaction actually was processed.

Non-Qualified Surcharge: A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above and Section 5.1).

Operating Procedures: The information prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in Part B of the Program Guide.

PAN Truncation: A procedure by which a Cardholder's copy of a Sales Draft or Credit Draft, or as required by applicable law, the Sales Draft or Credit Draft that you retain, will only reflect the last four digits of the Card account number.

Person: A third party individual or entity, other than the Client, Processor or Bank.

PIN: A Personal Identification Number entered by the Cardholder to submit a PIN Debit Card transaction.

PIN Debit Card: A device bearing the Marks of ATM networks (such as NYCE, Star) used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad.

PIN Debit Sponsor Banks: The PIN Debit Sponsor Bank(s) identified on the Application signed by you that is/ are the sponsoring or acquiring bank(s) for certain PIN Debit networks.

Point of Sale (POS) Terminal: A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

Processor: The entity identified on the Application (other than the Bank) which provides certain services under the Agreement.

Program Guide (also known as the Merchant Services Program Terms and Conditions): The booklet which contains Operating Procedures, General Terms, Third Party Agreements, and Confirmation Page, which, together with the Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

Recurring Payment Indicator: A value used to identify transactions for which a Cardholder provides permission to a merchant to bill the Cardholder's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

Referral: A message received from an Issuer when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

Reserve Account: An account established and funded at our request or on behalf, pursuant to Section 11 of the Agreement.

Resubmission: A transaction that the merchant originally processed as a Store and Forward transaction but received a soft denial from the respective debit network or Card Organization. The Resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case Client assumes the risk that the transaction fails.

Retrieval Request/Transaction Documentation Request: A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

Revenue: Total Fees for Services minus the amount of interchange, assessments and other pass through fees paid by you and passed through to payment networks by us. Total fees for Services includes Credit Card and Non-PIN Debit processing fees, PIN debit, non-bank, chargeback and other fees listed in the Pricing Terms.

Sales/Credit Summary: The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

Sales Draft: Evidence of a purchase, rental or lease of goods or Services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

Sales Volume: The total combined amount of Credit Card, PIN Debit and Non-PIN Debit (MasterCard, Visa and Discover) payment transactions processed by us minus any amounts attributable to returned items.

Schedules: The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement concurrently with or after the date of this Agreement.

Self Service Terminals: A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PIN's.

Servicers: Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers, unless otherwise indicated in this Program Guide.

Services: The activities undertaken by Processor and/or Bank, as applicable to authorize, process and settle all United States Dollar denominated Visa, MasterCard, Discover and American Express transactions undertaken by Cardholders at Client's location(s) in the United States, and all other activities necessary for Processor and Bank to perform the functions required by this Agreement for all other Cards covered by this Agreement. For the avoidance of doubt, and without limiting the foregoing, "Services" shall include any ancillary products or services provided to You by Processor and/or Bank in connection with this Agreement to the extent such products or services are not provided to you pursuant to a separate agreement with Processor and/or Bank.

Settlement Account: An account or account (s) at a financial institution designated by Client as the account to be debited and credited by Processor or Bank for Card transactions, fees, chargebacks and other amounts due under the Agreement or in connection with the Agreement.

Split Dial: A process which allows the authorization terminal to dial directly to different Card Processors (e.g., American Express) for Authorization. In this instance, the merchant cannot be both EDC and Split Dial. Split Dial is also utilized for Check Guarantee companies.

Split Dial/Capture: Process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization and Electronic Draft Capture.

Store and Forward: A transaction that has been authorized by a merchant when the merchant cannot obtain an authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

Submission: The process of sending Batch deposits to Processor for processing. This may be done electronically or by mail.

Summary Adjustment: An adjustment to your Submission and / or Settlement Accounts in order to correct errors. (See Sections 35.3 and 35.4.)

Telecommunication Card Sales: Individual local or long distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present Sales.

Transaction Fees: Service costs charged to a merchant on a per transaction basis.

Us, We and Our: See Servicers.

You, Your: See Client.

40. ADDITIONAL IMPORTANT INFORMATION PERTAINING TO THIS ENTIRE AGREEMENT

40.1. Electronic Funding Authorization

All payments to Client shall be through the Automated Clearing House ("ACH") and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of Client's Card sales pursuant to the Agreement. Client agrees that any Settlement Account designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither Wells Fargo Bank, N.A. ("Wells Fargo Bank") nor Wells Fargo Merchant Services, L.L.C. can guarantee the timeframe in which payment may be credited by Client's financial institution where the Settlement Account is maintained.

Client hereby authorizes Wells Fargo Bank and its authorized representative, including Wells Fargo Merchant Services, L.L.C., to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize your financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account and to authorize your financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees and assessments and Chargeback amounts of whatever kind or nature due to Wells Fargo Merchant Services, L.L.C. or Wells Fargo Bank under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged ten dollars (\$10.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies Wells Fargo Merchant Services, L.L.C. that ACH's can be processed or (ii) a new electronic funding agreement is signed by Client. Client's Settlement Account must be able to process or accept electronic transfers via ACH.

40.2. Funding Acknowledgement Automated Clearing House (ACH)

Automated Clearing House (ACH). I acknowledge that the funds for MasterCard, Visa and Discover transactions will be processed and transferred to my Settlement Account within two (2) Business Days from the time a Batch is closed (by 12:00 a.m. PT) and within one (1) Business Day from the time the Batch is closed (by 12:00 a.m. PT) if such account is a Wells Fargo Settlement Account. The ACH transactions will appear on your statement as "Merchant Bnkcd."

40.3. Additional Fees and Early Termination

The fees for Services as shown on your pricing disclosure are based on the assumption that your Credit Card and Non-PIN Debit transactions will qualify at the Anticipated Interchange Levels associated with your account.

If a transaction fails to qualify for your Anticipated Interchange Levels, you will be billed a Non-Qualified Interchange Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction (see Section 5.1 and Glossary).

Your initial fees for Services are stated on your Application and may be adjusted from time to time to reflect:

- Any increases or decreases in the interchange and/or assessment portion of the fees,
- The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client, and
- Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by Wells Fargo Merchant Services, L.L.C. when such costs are included in the Service or other fixed fees.

In addition to the Debit Card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

A Monthly Minimum Processing Fee will be calculated beginning thirty (30) days after the date Client's Application is approved. (Refer to your pricing disclosures.)

Authorization Fees are charges that apply each time you communicate directly with Processor.

Authorization /EDC Fee applies to all Visa, MasterCard and Discover Card approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

An equipment rental fee will be charged each month for each piece of equipment rented, plus tax as applicable. Client will be charged for actual shipping fees for equipment and cost of supplies.

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, if (a) Client breaches this Agreement by improperly terminating it prior to the expiration of the applicable term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, then SERVICERS will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre-estimate of SERVICERS' probable loss. Such amount shall be paid to SERVICERS within 15 days after Client's receipt of SERVICERS' calculation of the amount due.

If Client terminates the Agreement prior to the end of the then current term of the Agreement, Client shall pay an early termination fee equivalent to one of the following:

- If the Client's total Sales Volume for the preceding 12 months* is less than One Million Dollars (\$1,000,000), the early termination fee is Five Hundred Dollars (\$500.00) per location; or
- If the Client's total Sales Volume for the preceding 12 months* is greater than or equal to One Million Dollars (\$1,000,000), the early termination fee is Five Hundred Dollars (\$500.00) per location plus six (6) times the highest amount of Revenue in any single calendar month during the current or prior term.

*If you have been processing with us for less than 12 months, the early termination fee shall be calculated based on "Annualized Sales Volume" in lieu of "Sales Volume."

Client's obligation with respect to any Monthly Minimum Processing Fee will end when SERVICERS receive the aforementioned liquidated damages.

40.4. Addresses for Notices

PROCESSOR:

Wells Fargo Merchant Services, L.L.C.:

1307 Walt Whitman Road
Melville, NY 11747
Attn: Sales Manager

BANK:

Wells Fargo Bank:

1200 Montego
Walnut Creek, CA 94598
Attn: Merchant Services

Important Phone Numbers:

(see also Sections 28.3 and 30.3)

Customer Service
1-800-451-5817 press 1

**MasterCard/Visa/Discover
Authorization Center**

1-800-626-4480

POS Help Desk

1-800-622-0842

If this application for business credit is denied you may obtain a written statement of the specific reasons for the denial. To obtain the statement, please contact Credit Initiation, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 32900, within sixty (60) days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within thirty (30) days of receiving your request.



PART III: THIRD PARTY AGREEMENTS

The following Agreements are Third Party Agreements entered into between Client and the Third Parties identified in the Third Party Agreements.

If Client desires to receive the products and/or services offered under a Third Party Agreement, Client must check the appropriate box or otherwise indicate such desire in the Merchant Processing Application, in which case the terms and conditions of the Third Party Agreement shall be binding upon Client. The Signature page in the Merchant Processing Application or any Schedule thereto shall also serve as a signature page to the Third Party Agreements.

Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Processing Application and the Schedules thereto, all of which are incorporated by reference into the Third Party Agreements.

1.0. TELECHECK SERVICES AGREEMENT

This TeleCheck Services Terms and Conditions (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber ("Subscriber") as indicated on the Merchant Processing Application. TeleCheck will provide one of the following services ("TeleCheck Services") as selected in the Merchant Processing Application: TeleCheck Electronic Check Acceptance® ("ECA®") warranty service ("ECA Warranty Service") or Paper Warranty service ("Paper Warranty Service"). Upon processing Subscriber's first check through any of the TeleCheck® services or from the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

1.0. TeleCheck Services Agreement

This TeleCheck Services Terms and Conditions (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber ("Subscriber") as indicated on the Merchant Processing Application. TeleCheck will provide one of the following services ("TeleCheck Services") as selected in the Merchant Processing Application: TeleCheck Electronic Check Acceptance® ("ECA®") warranty service ("ECA Warranty Service"), paper warranty service ("Paper Warranty Service"). Upon processing Subscriber's first check through any of the TeleCheck® services or from the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

1.1. Term, Termination and Amendment. This Agreement shall be effective for an initial term of 12 months from the Effective Date; provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. Thereafter, this Agreement shall automatically renew for successive 12 month terms until terminated as provided for herein. Subscriber may terminate this Agreement at the end of the initial term or any renewal term upon at least 30 days' prior written notice to TeleCheck. TeleCheck reserves the right to amend, at its discretion, this Agreement, including, without limitation, any rates, fees, addenda and/or the TeleCheck Operational Procedures, by providing Subscriber notice and such amendments shall be effective 30 days from the date notice is mailed to Subscriber. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. TeleCheck may terminate this Agreement at any time upon notice to Subscriber. Subscriber may terminate this Agreement at anytime upon written notice if TeleCheck has failed to cure a material breach of this Agreement within 30 days following written notice of that breach given by Subscriber.

1.2. Definitions. As used in this Agreement, the following definitions apply: "ACH Network" means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. "Authorization Receipt" means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction, as applicable. "Batch" means a collection of saved transactions transmitted to TeleCheck for settlement processing. "Claim" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. "Consumer" means a person or entity that authorizes an Item. "Consumer Authorization Format" means the required format (including, without limitation, all verbiage for payment authorization, return item fees, check approvals and declines, etc.), provided by TeleCheck to Subscriber, as amended from time to time, for processing Consumer payments to Subscriber by an Electronic Item. "ECA Warranty Transaction" means a transaction processed by TeleCheck under the ECA Warranty Service (as applicable), as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or service by a Consumer at Subscriber's physical location. "Item" means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. "NACHA Rules" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. "Paper Warranty Transaction" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Service program. "Return Item Fee" means any fee or exemplary damages allowed by law that may be assessed on a Return Item. "Return Items" mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing. "Returned Payment" means any financial obligation pursuant to this Agreement not paid

by Subscriber's financial institution. "Subscriber's Account" means Subscriber's financial institution account. "TeleCheck Approval Code" means (a) for warranty services, that TeleCheck has authorized an Item for warranty coverage under this Agreement, and (b) for verification services, that TeleCheck has authorized an Item as eligible for processing. "TeleCheck Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement. "TeleCheck Parties" means TeleCheck, its affiliates, officers, directors, employees, shareholders, agents and attorneys. "Warranty Maximum" (a) for an Item processed as an ECA Warranty Transaction means the lower of (i) the face amount of the Item, (ii) the amount set forth on the Merchant Processing Application; or (iii) \$25,000.00; (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) \$99,999.99.

TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICE

1.3. ECA Warranty Service.

1.3.1. Description. The TeleCheck ECA Warranty Service provides Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 3.3, all in accordance with this Agreement.

1.3.2. Processing Services. For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due ("Funds Hold") should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to placing a Funds Hold with respect to any payment, TeleCheck may also freeze all processing activities. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

1.3.3. Warranty Requirements. TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one Item per ECA Warranty

Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the Item. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such Item subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each ECA Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- a. The check is a first party check drawn on Consumer's deposit account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- b. Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in 3.6(f)), including through split sales;
- c. The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d. The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- e. The date of the check and the ECA Warranty Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g. The transaction is not subject to any stop payment, dispute or set-off;
- h. Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules including, without limitation, posting notice to authorize the ECA Warranty Transaction and the Return Item Fee in a prominent and conspicuous location, and providing a copy of the notice to the Consumer, all in accordance with Regulation E (12 C.F.R. Part 205);
- i. Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;
- j. The paper check to which the ECA Warranty Transaction relates: (i) has not been used in any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer;
- k. The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and
- l. If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth in Section 4.2 shall be applicable to such ECA Warranty Transaction.

1.3.4. Authorization Receipts. Subscriber shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Subscriber (upon reasonable notice and during normal business hours) for compliance with this requirement.

1.3.5. Assignment of ECA Warranty Transactions. By electing to subscribe to the TeleCheck ECA Warranty Service, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any ECA Warranty Transaction submitted by Subscriber to TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

1.3.6. Chargeback and Reassignment. TeleCheck may chargeback to Subscriber any ECA Warranty Transaction processed by TeleCheck, or reassign to Subscriber any ECA Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

- a. The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b. Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- c. The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d. Any of the representations made by Subscriber as set forth in Section 3.3 are or become false or inaccurate;
- e. Subscriber failed to comply with this Agreement;
- f. Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;
- g. The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;
- h. A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- i. Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;
- j. Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice; or
- k. The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within 7 days from the date the TeleCheck Approval Code was issued for the transaction.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) TeleCheck may deduct or offset such Item against any amounts to be paid to Subscriber for ECA Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

1.3.7. Account Reconciliation. Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 3.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

1.3.8. "Goodwill" of a Non-Compliance Item. TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty

requirements set forth in Section 3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

1.3.9. Reserve Account Establishment and Funding. Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

1.3.10. Fees and Rates. Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Inquiry Rate"** is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The **"Transaction Fee"** is the additional per transaction charge for each ECA Warranty Transaction inquiry, whether or not a TeleCheck Approval Code is issued. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** or **"Voice Authorization Fee"** is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The **"Monthly Statement/Processing Fee"** is a monthly fee for handling Subscriber's account.

The following additional fees may be also be charged by TeleCheck: The **"Funding Report Fee"** is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The **"Chargeback Fee"** is a \$5.00 handling fee for each chargeback of an ECA Warranty Transaction. The **"Correction Fee"** is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The **"Recovery Processing Fee"** is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A **"Terminal Application Update Fee"** of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. Any additional requests or other services not included in this Agreement may be subject to additional fees. Fees for these items may be obtained by contacting TeleCheck. The above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

TERMS APPLICABLE ONLY TO TELECHECK PAPER WARRANTY SERVICE

1.4. Paper Warranty Service.

1.4.1. Description. TeleCheck Paper Warranty Service provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 4.2, all in accordance with this Agreement.

1.4.2. Warranty Requirements. TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one check per Paper Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Paper Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- a. The check is a first party check drawn on Consumer's deposit account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;
- b. Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 4.4(f)), including through split sales;
- c. The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d. The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- e. The date of the check accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g. The TeleCheck Subscriber Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the check;
- h. The amount shown in words and figures on the check is (i) less than or equal to the amount entered into the TeleCheck system, or (ii) no more than \$1.00 over the amount entered into the TeleCheck system;
- i. The check is deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the check. Such check has been sent directly from Subscriber's financial institution after being presented for payment only once (no representations shall be allowed, whether paper or electronic); and
- j. The transaction is not subject to any stop payment, dispute or set-off.

1.4.3. Assignment of Checks. By electing to subscribe to the Paper Warranty Service, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any check submitted to TeleCheck for coverage under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

1.4.4. Reassignment. TeleCheck may reassign to Subscriber any check purchased by TeleCheck pursuant to the Paper Warranty Service provisions of this Agreement, in any of the following circumstances:

- a. The goods or Service, in whole or in part, for which the check was issued have been returned to Subscriber, have not been delivered by Subscriber, claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;

- b. Subscriber has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;
- c. The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d. Any of the representations made by Subscriber as set forth in Section 4.2 are or become false or inaccurate;
- e. Subscriber failed to comply with this Agreement;
- f. Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or
- g. Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the check, or upon request, Subscriber shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Subscriber on such check. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

1.4.5. "Goodwill" of a Non-Compliance Item. TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

1.4.6. Fees and Rates. Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Inquiry Rate"** is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The **"Transaction Fee"** is the additional per transaction charge for each transaction inquiry, whether or not a TeleCheck Approval Code is issued. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** or **"Voice Authorization Fee"** is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The **"Monthly Statement/Processing Fee"** is a monthly fee for handling Subscriber's account. The following additional fees may be also be charged by TeleCheck: The **"Recovery Processing Fee"** is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse

Subscriber as a "Goodwill Item" for a specific Return Item. A **"Terminal Application Update Fee"** of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. Any additional requests or other services not included in this Agreement may be subject to additional fees. Fees for these items may be obtained by contacting TeleCheck. The above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

1.5. Payment. All fees and charges are due upon receipt of invoice. Subscriber authorizes TeleCheck to debit from Subscriber's Account, all payments and other amounts owed (including, without limitation, all Return Items, Returned Payments, chargebacks, adjustments, fees and charges, and delinquency charges) under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates, and to credit all amounts owing to Subscriber under this Agreement to Subscriber's Account. If there are insufficient funds in Subscriber's Account to pay amounts owed to TeleCheck or its affiliates, or if debits to Subscriber's account are rejected due to ACH debit blocks, or if there are any amounts otherwise not paid by Subscriber when due, including, without limitation, delinquency charges, chargebacks or rejected and reassigned warranty Items, Subscriber shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset or recoup such amounts against any amounts due Subscriber under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a fee of \$25.00 or the highest amount permitted by law, whichever is lower, for any Returned Payment. Subscriber shall also be responsible for paying for all of the point of sale supplies related to the TeleCheck services (i.e., paper and ink for terminals, rubber stamps, if applicable).

1.6. Security Interest. To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement (including any check or credit card processing services), Subscriber grants to TeleCheck a lien and security interest in and to any of Subscriber's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Subscriber from TeleCheck. Any such funds may be commingled with other funds of TeleCheck, or, in the case of any funds held in a reserve account, with any other funds of other subscribers of TeleCheck. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by Subscriber at any time and from time to time, without notice or demand to Subscriber or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement, including, without limitation, fees for any other services (including any check or credit card processing services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Subscriber agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

1.7. Point of Sale Notices; Return Item Fees. Subscriber agrees to follow procedures and post and provide at TeleCheck's direction any notices (including any updates to such notices) which in TeleCheck's opinion may be required for TeleCheck to process the Item and/or the Return Item Fee, as an electronic funds transfer, draft or otherwise. Subscriber also agrees to assess a Return Item Fee on all Return Items, and that TeleCheck shall be entitled to collect and retain the Return Item Fee from Consumer.

1.8. TeleCheck Approval Code. Subscriber acknowledges that TeleCheck will use its internal and proprietary risk management systems to evaluate the risk associated with any particular Item and to assist in its decision whether or not to issue a TeleCheck Approval Code. The decision to issue a TeleCheck Approval Code shall be within the discretion of TeleCheck.

1.9. Credit Law Compliance. Subscriber certifies that: (a) Subscriber has a legitimate business need, in connection with a business transaction initiated by Consumer, for the information provided by TeleCheck under this Agreement

regarding such Consumer; and (b) the information provided by TeleCheck shall only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information shall not be used for employment purposes, and shall not be used by Subscriber for any purpose other than a single business transaction between Consumer and Subscriber occurring on the date of the inquiry call to TeleCheck. Neither Subscriber, nor Subscriber's agents or employees, shall disclose the results of any inquiry made to TeleCheck except to Consumer about whom such inquiry is made and in no case to any other person outside Subscriber's organization. If Subscriber decides to reject any transaction, in whole or in part, because of information obtained from TeleCheck, Subscriber agrees to provide Consumer with all information required by law and TeleCheck.

1.10. Use of TeleCheck Materials and Marks. Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this section, TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable limited license, uncoupled with any right or interest, to use the **TELECHECK** and the **TELECHECK logo** service marks, and for those Subscribers who are receiving ECA Warranty Service or ECA Verification Service, the **TELECHECK ELECTRONIC CHECK ACCEPTANCE** and **ECA** Service marks (collectively, the "TeleCheck Marks") as follows. Subscriber may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Subscriber's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber number assigned by TeleCheck. Subscriber agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Subscriber will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Subscriber shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Subscriber further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair competition to TeleCheck or TeleCheck International, Inc. Subscriber agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Subscriber shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Subscriber Name")."

1.11. Use of Information. Subscriber agrees that: (a) any data and other information relating to an Item or Consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or driver's license or other identification) shall be owned by TeleCheck, with all right, title, and interest thereto; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate.

1.12. TeleCheck Operational Procedures. Subscriber shall strictly follow all TeleCheck Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion.

1.13. Equipment.

1.13.1. General. Subscriber may purchase point-of-sale equipment or Subscriber may rent equipment from TeleCheck as indicated on the Merchant Processing Application. Title to all rental or loaned equipment, if any, is retained by TeleCheck. Monthly rental fees will apply to all months or fractions of a month any equipment remains in use by or in the actual or constructive possession of Subscriber. Upon termination of this Agreement, Subscriber, at Subscriber's expense, shall return all rented or loaned equipment to TeleCheck in good repair, ordinary wear and tear excepted. TeleCheck will replace or repair terminal equipment rented or purchased from TeleCheck provided, however that a swap fee of \$129.00 shall be charged per POS terminal replaced. Subscriber bears the

entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. If TeleCheck provides replacement equipment to Subscriber via mail or other delivery service, Subscriber must return replaced equipment to TeleCheck within thirty (30) business days or Subscriber will be deemed to have purchased the equipment and will be billed for it. Subscriber will not permit anyone other than authorized representatives of TeleCheck to adjust, maintain, program or repair equipment. A reprogramming fee of \$25.00 rate will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber will install all product updates to the equipment, its software or firmware, within thirty (30) days of receiving the updates from TeleCheck. There is a 30-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

1.13.2. Equipment Software, Firmware License. TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, non-assignable and non-transferable limited license to use the software and firmware provided with the equipment; provided, Subscriber will not: (i) export the equipment, software or firmware outside the US; (ii) copy or use the software, firmware or documentation provided by TeleCheck with the equipment; (iii) sublicense or otherwise transfer any portion of such software, firmware, documentation or the equipment; (iv) alter, change, reverse engineer, decompile, disassemble, modify or otherwise create derivative works of such software, firmware, documentation or the equipment; or (v) remove or alter any intellectual property or proprietary notices, markings, legends, symbols, or labels appearing on, in or displayed by such software, firmware, documentation or the equipment.

1.14. Limitation of Liability. In no event shall either TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Subscriber against TeleCheck, whether related or unrelated), the lesser of: (a) the total amount of fees paid to TeleCheck by Subscriber pursuant to this Agreement during the 12 month period immediately preceding the date the event giving rise to such Claims occurred; or (b) \$75,000.00.

1.15. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

1.16. Changes in Law or NACHA Rules. Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Subscriber, modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may increase its fees by providing Subscriber 30 days written notice. Any notice under this section to increase fees or modify obligations will be effective 30 days from the date notice is mailed to Subscriber, and in such event Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period.

1.17. Data Security. Subscriber shall implement commercially reasonable and prudent policies and procedures, including administrative, physical and technical safeguards which are designed to meet the following objectives: (a) ensure the security and confidentiality of Customer Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of such Customer Information, and (c) protect against unauthorized access to or use of Customer Information that could result in substantial harm or inconvenience to Subscriber's customer. "Customer Information" means all Subscriber customer information received by Subscriber in connection with any transaction contemplated by this Agreement. Subscriber agrees to comply

with all provisions of applicable federal and state laws and regulations and NACHA Rules, as amended from time to time, related to the protection of Customer Information.

1.18. Updating Information. With regard to any Return Items submitted to TeleCheck, Subscriber shall promptly notify TeleCheck if: (a) a Consumer makes any payment to Subscriber; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

1.19. Confidentiality. Subscriber shall maintain the confidentiality of this Agreement and any information provided to Subscriber by either TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

1.20. No Resale, Assignment of Agreement. This Agreement is solely between TeleCheck and Subscriber. Subscriber shall not provide or resell directly or indirectly, the services provided by TeleCheck to any other third party. This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and Subscriber's heirs, executors, administrators, successors and assigns.

1.21. Indemnification. In the event Subscriber (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement and any addenda hereto or TeleCheck Operational Procedures; or (ii) applicable law, rules, regulations and NACHA Rules, or (b) makes any false or inaccurate representation, Subscriber shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (a) promptly notify TeleCheck of the Claims or legal action; (b) reasonably cooperate with TeleCheck in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

1.22. Notices. Any notice or other communication required or permitted to be given hereunder shall be delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted if, to Subscriber, at the address provided on the Merchant Processing Application or, if to TeleCheck, at TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114, with a copy to General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing, unless otherwise provided in this Agreement. The parties' addresses may be changed by written notice to the other party as provided herein.

1.23. Force Majeure. TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, failure, delay or error by any third party or any other third party system, strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God or other causes reasonably beyond the control of TeleCheck.

1.24. Compliance with Laws, Governing Law, Integration and Waiver of Jury Trial. Subscriber agrees to comply with all federal and state laws, regulations and rules, including NACHA Rules, each as amended, relating to the services provided hereunder. **Subscriber acknowledges and agrees that it will not use Subscriber's Account and/or the TeleCheck Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time.** Subscriber certifies that it has not been suspended by NACHA or any Card Organization, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

1.25. Severability and Interpretation, Third Party Beneficiaries. If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement.

1.26. Amendment and Waiver. No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck unless made in writing and approved and signed by TeleCheck. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver by any party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement. The parties agree that no failure or delay in exercising any right hereunder shall operate as a waiver of any such right. All of TeleCheck's rights are cumulative, and no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

1.27. Damages. Upon Subscriber's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Monthly Statement/Processing Fees payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach.

28. Financial and Other Information

1.28.1. Upon request, you will provide us and our affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. Upon request, you shall provide, and/or cause to be provided, to us and our affiliates, or our representatives or regulators reasonable access to your or your service provider's facilities and records for the purpose of performing any inspection and/or copying of books

and/or records deemed appropriate. In such event, you shall pay the costs incurred by us or our affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations.

1.28.2. You will provide us with written notice of any judgment, writ, warrant, or attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of the same.

1.29. Survivability. All representations, warranties, indemnities, limitations of liability and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

1.30. IRS Reporting. Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year beginning January 1, 2011 reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, for applicable transactions, you will receive a Form 1099 reporting your gross transaction amounts for each calendar year beginning with transactions processed in calendar year 2011. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

2.0. AGREEMENT FOR AMERICAN EXPRESS CARD ACCEPTANCE – AMERICAN EXPRESS ONEPOINT PROGRAM

Terms and Conditions For American Express OnePoint Card Acceptance Establishment Sales and Servicing Program

2.1. Scope and Other Parts of the Agreement; Definitions

a. Scope of the Agreement. The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent, Wells Fargo Merchant Services, L.L.C., among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you alone. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. Other Parts of the Agreement.

i. **Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 2.8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our agent: Wells Fargo Merchant Services, LLC (1-800-451-5817), or online at: <http://www.americanexpress.com/opmerchantpolicy>. We may charge you a fee for each copy that you request.

ii. **Schedule A.** Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

c. **Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.

Affiliate means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the Entity.

Agreement means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

American Express Card and Card mean (i) any card, account access device, or payment device bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number.

Cardmember means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

Charge means a payment or purchase made on the Card.

Chargeback (sometimes called "Full Recourse" or "Full Recourse" in our materials), when used as a verb, means our reimbursement from you for the amount of a Charge subject to such right; when used as a noun, means the amount of a Charge subject to reimbursement from you.

Claim means any claim (including initial claims, counterclaims, cross claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

Credit means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

Discount means the amount that we charge you for accepting the Card, which amount is: (i) a percentage (Discount Rate) of the face amount of the Charge that you submit; or a flat Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

Disputed Charge means a Charge about which a claim, complaint, or question has been brought.

Entity means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

Establishments means any or all of your and your Affiliates' locations, outlets, web sites, on-line networks, and all other methods for selling goods and services, including methods that you adopt in the future.

General Provisions means the provisions set out in this document other than in Schedule A or any other accompanying schedule or exhibit hereto.

Marks mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

Merchant Regulations means the American Express Merchant Regulations – U.S., which are available from our agent.

Merchant Number (sometimes called the "Merchant ID" or "Establishment" or "SE" number in our materials) means the unique ten-digit number we assign to your Establishment. If you have more than one Establishment, we may assign to each a separate Merchant Number.

Other Agreement means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.

Other Payment Products mean any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.

Reserve means a fund established and/or collateral held by us as security for your or any of your Affiliates' obligations to us or any of our Affiliates under the Agreement or any Other Agreement.

We, our and us mean American Express Travel Related Services Company, Inc.

You and your (sometimes called the "Merchant," "Service Establishment," or "SE" in our materials) mean the Entity accepting the Card under the Agreement, and its Affiliates conducting business in the same industry.

d. List of Affiliates. You must provide to our agent a complete list of your Affiliates conducting business in your industry and notify our agent promptly of any subsequent changes in the list.

2.2. Accepting the Card

a. Acceptance. You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for the performance by your Establishment of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

b. Transaction Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

i. **Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that comply with our requirements, as described in the Merchant Regulations. You may create multiple Charge Records for a single purchase placed on different Cards, but you must not create multiple Charge Records for a single purchase to the same Card, by dividing the purchase into more than one Charge.

ii. **Authorization.** You must obtain from and submit to us an Authorization Approval code for all Charges. Authorization does not guarantee that we will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

iii. **Submitting Charges and Credits.** Your Establishments must submit Charges and Credits in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card account used to

make the original purchase, except as otherwise expressly specified in the Merchant Regulations.

iv. **Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

v. **Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

vi. **Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS performed by Qualified Security Assessors or Approved Scanning Vendors (or both).

2.3. Protective Actions

3. Protective Actions

a. **Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 2.3 of the General Provisions is subject to prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Agreement or any Other Agreement or to Cardmembers. Upon the occurrence of an event described in Section 2.3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount proportional to the risk covered by such event.

b. **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business; (iv) your becoming insolvent; (v) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vi) our reasonable belief that you will not be able to perform your obligations under the Agreement, under any Other Agreement, or to Cardmembers; or (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

c. **Application of Reserve. We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement (ii) any costs incurred by us in connection with the administration of the Reserve, including attorney's fees, and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including Attorney Fees and our cost of handling Disputed Charges.**

d. **Other Protections.** We may take other reasonable actions to protect our rights and rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, or charging you fees for Disputed Charges.

e. **Providing Information.** You must provide to us promptly, upon request, information about you and your Affiliates finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify us immediately of the occurrence of any event described in Section 2.3.b.viii of the General Provision.

2.4. Notices

a. **Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

b. **Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at: American Express Travel Related Services Company, Inc. c/o 1307 Walt Whitman Road, Melville, NY 11747.

c. **Your Notice Address.** Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

2.5. Indemnification and Liability

a. **Indemnity.** You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, assigns, and third party licensees, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

b. **Limitation of Liability.** In no event shall we or our Affiliates, agents, successors, or assigns be liable to you for any incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with the Agreement, even if advised of such potential damages. Neither you nor we (and our agent) will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system, except that our (and our agent's) rights to create Reserves and exercise Chargebacks will not be impaired by such events.

2.6. Term and Termination

a. **Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 2.4.a of the General Provisions.

b. **Grounds for Termination.** In addition to our rights in sections 2.3.c and 2.6.a of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

c. **Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.

d. **Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive

termination, including the provisions of sections 2.1, 2.3, 2.5, 2.6, 2.7, and 2.8 of these General Provisions, our Charge back rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Demand Deposit Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

2.7. Dispute Resolution

a. Arbitration Rights. All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 7 rather than by litigation.

b. Arbitration Rules/Organizations. The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 2.7 and any rule or procedure of the arbitration organization, this section 2.7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; www.arbitration-forum.com
- American Arbitration Association (AAA): 335 Madison Ave., New York, NY 10017; (800) 778-7879; www.adr.org
- JAMS (JAMS): 1920 Main Street, Suite 300, Irvine, CA 92614; (949) 224-1810; www.jamsadr.com

c. Limitation of Rights. IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PREARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF OR AAA, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 2.7 c OR OF SECTION 2.7.d BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 2.7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

d. Individually Named Parties Only. All parties to the arbitration must be individually named. There is no right or authority for any Claims to be arbitrated or litigated on a class action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you and we are specifically barred from doing so. This prohibition is intended to, and does, preclude any trade association or other organization from arbitrating any Claim on a representative basis on behalf of the organization's members. The arbitrator's authority to resolve Claims OmahaWF1208 30 is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.

e. Application of Provision. For the avoidance of any confusion, and not to limit its scope, this section 2.7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 2.1 and 2.2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

f. Equitable Relief. The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 2.7, nor to determine any matter or make any award except as provided in this section 2.7.

g. Small Claims Court; Injunctive Relief. We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 2.8.a and 2.8.b of these General Provisions is not subject to the requirements of this Section 2.7. This section 2.7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

h. Governing Law/Appeal/Entry of Judgment. This section 7 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA). The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF or AAA or JAMS, as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

i. Confidential Proceedings. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations, arbitrations, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration.

j. Split Proceedings for Equitable Relief. Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section 7.c above, if any portion of this Section 7 (other than section 7.c or d) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

k. Costs of Arbitration Proceedings. You will be responsible of paying your share, if any of the arbitration fees (including filing, administrative, hearing and/or other fees) provided by the Arbitration Rules, to the extent such fees do not exceed the amount of the filing fees you would have incurred if the Claim had been brought in a state or federal court that would have jurisdiction over the Claim located in the federal judicial district where your headquarters is located. We will be responsible for paying the remainder of any arbitration fees. At your written request we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seek arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

2.8. Miscellaneous

a. Confidentiality. You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

b. Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

c. Your Representations and Warranties. You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your

obligations or pay your debts hereunder; (v) you are authorized to enter into this Agreement on behalf of your Establishments and Affiliates, including those indicated in this Agreement, and the individual who signs this Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under this Agreement; (viii) all information that you provided in connection with this Agreement is true, accurate, and complete; and (ix) you have read this Agreement and kept a copy for your file. If any of your representations or warranties in this Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate this Agreement in our discretion.

d. Compliance with Laws. You shall comply with all applicable laws, regulations, and rules.

e. Governing Law; Jurisdiction; Venue. The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (E-Sign Act). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

f. Interpretation. In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to"; (iv) the term "day" means "calendar day;" (v) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vi) all captions, headings, and similar terms are for reference only; and (vii) where specific language is used to illustrate by example or clarify a general statement such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

g. Assignment. You shall not assign the Agreement, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of the parties and their respective successors and permitted assigns.

h. Waiver; Cumulative Rights. Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

i. Savings Clause. Other than as set forth in the last sentence of section 2.7.c of the General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

j. Amendments. We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail does not constitute such a signed writing.

1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations; and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.
- Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

2) Unscheduled Changes. We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

k. Entire Agreement. The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

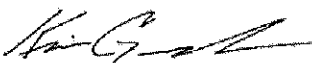
l. Disclaimer of Warranties. WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT

m. No Third-Party Beneficiaries. The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns.

n. Press Releases. You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.

o. Independent Contractors. You and we are independent contractors. No agency, partnership, joint venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: 

Kim C. Goodman
President

Merchant Services, Americas.

SCHEDULE A

Other Important Provisions for Card Acceptance American Express OnePoint Program

1. Overview of American Express OnePoint Program

a. Eligibility; Transition to Our Standard Card Acceptance Program. Our American Express OnePoint Program provides integrated Card acceptance services to eligible Entities through our agents, including Wells Fargo Merchant Services, L.L.C. If you do not qualify for this program, you may be enrolled in our standard American Express Card acceptance program, which has different servicing terms (e.g., different speeds of payment); you may terminate the Agreement if you do not wish to so be enrolled. If you become ineligible for our American Express OnePoint Program, we will transition you to our standard American Express Card acceptance program upon forty-five day's prior notice, unless you opt-out of that transition by notifying our agent in writing no later than fifteen days prior to the effective date of transition.

b. Program Services. We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms we, our, or us also may refer to our agent above, as the context requires. Please direct all inquiries and notices under the American Express OnePoint Program to our agent:

Wells Fargo Merchant Services, L.L.C.
1307 Walt Whitman Road
Melville, NY 11747
1-800-451-5817

c. Merchant Regulations. The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for the American Express OnePoint Program, references in the Merchant Regulations to those industries may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about specific industries under the program.

2. Doing Business with American Express

a. Certain American Express Terms Not Applicable. Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with our systems and you must not provide Payment Services or otherwise act as a Payment Service Provider.

b. Merchant Number; Your Merchant Information. Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

3. Authorization

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

4. Submission

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or Credit originated. You must not submit Charges and Credits on paper.

5. Settlement

a. Settlement Amount. Our agent will pay you according to your payment plan, as described below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, which may include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions from this payment to you (or debit your Demand Deposit Account), but if it cannot, then you must pay it promptly upon demand.

b. Discount. Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.

c. Payment Plan. During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation options) with our agent govern settlement payments to you. Our agent will send payments for Charges from your Establishments according to your payment plan to your Demand Deposit Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Demand Deposit Account.

6. Protecting Cardmember Information

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

7. Risk Evaluation

a. Prohibited/High Risk Merchants and Activities. Entities classified in certain industries or accepting Transactions for certain prohibited activities do not qualify for the American Express OnePoint Program, but may qualify for our standard American Express Card acceptance program. Please contact our agent with any questions about those risk evaluation procedures under the program.

b. Protective Actions. Our agent may take actions to protect our rights or those of any of our Affiliates on our behalf. For example, the determination to establish a Reserve may be triggered by events identified by our agent and may include requiring you to deposit funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising immediate Chargeback, and charging you fees for Disputed charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from, and recoup and offset against the Reserve any amounts owed under the Agreement; and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify our Agent immediately of the occurrence of any event described in Section 2.3, b vii of the General Provisions.

8. Inquiries and Chargebacks

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

3.0. Equipment Lease Agreement

This Section 3.0 governs any equipment that is leased to you. If your Application or other documents reflect that your equipment is purchased or rented, then the provisions of purchase or rental are governed by the Equipment Agreement set forth in Section 18.

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between you and First Data Merchant Services Corporation (hereinafter, "Lessor," and through its business unit First Data Global Leasing). For purposes of this section, the words "we," "our" and "us" refer to First Data Merchant Services Corporation and its successors and assigns, and the words "you" and "your" refer to the Lessee and its permitted successors and assigns.

Lessee hereby authorizes Lessor to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the MPA (the "Settlement Account"). In the event of default of Lessee's obligations hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to Credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

3.1. Equipment. We agree to lease to you and you agree to lease from us the equipment identified on the Merchant Agreement or such other comparable equipment that we provide to you (the "Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Leased Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Leased Equipment for any particular purpose. The term of Equipment includes the Equipment initially deployed under this Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

3.2. Effective Date; Term and Interim Rent.

- a. This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date"), or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Leased Equipment to the site designated by you.
- b. The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. **THIS IS A NONCANCELABLE LEASE FOR THE TERM INDICATED ON THE MPA.**
- c. You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.
- d. **YOU ACKNOWLEDGE THAT THE LEASED EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR LEASED EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF THE MERCHANT PROCESSING AGREEMENT YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE LEASED EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.**

3.3. Site Preparation. You will prepare the installation site(s) for the Leased Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

3.4. Payment of Amounts Due.

- a. The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation of Leased Equipment.
- b. In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Leased Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance

expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth on the MPA and/or applicable Fee Schedule.

- c. Your lease payments will be due despite dissatisfaction with the Leased Equipment for any reason.
- d. Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your Settlement Account that is rejected but in no event more than the maximum amount permitted by law.
- e. In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort but in no event more than the maximum amount permitted by law.

3.5. Use and Return of Equipment; Insurance.

- a. You shall cause the Leased Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Leased Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.
- b. You shall not permit any physical alteration or modification of the Leased Equipment, or change the installation site of the Leased Equipment, without our prior written consent.
- c. You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Leased Equipment without our prior written consent.
- d. You shall comply with all governmental laws, rules and regulations relating to the use of the Leased Equipment. You are also responsible for obtaining all permits required to operate the Leased Equipment at your facility.
- e. We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Leased Equipment.
- f. The Leased Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Leased Equipment evidencing our ownership.
- g. You shall keep the Leased Equipment adequately insured against loss by fire, theft, and all other hazards.
- h. You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services Corporation as an additional insured under your insurance policy. **The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.**
- i. If you do not provide such proof of insurance, you may be charged a fee, on which we may make a profit, as set forth on your fee schedule in connection with insuring the Equipment.

3.6. Title to Equipment. The Leased Equipment is and shall at all times be and remain our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed to in writing. Except as expressly provided in Section 8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Leased Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Leased Equipment, then we shall be deemed to have a first lien security interest on the Leased Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

3.7. Return or Purchase of Equipment at End of Lease Period. Upon the completion of your lease term or any extension, you will have the option to (a) return the Equipment to us, or (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment. In the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment; or (c) after the final lease payment has been received by FDGL, the Agreement will revert to a month by month rental at the existing monthly lease payment. If Client does not want to continue to rent the equipment, then Client will be obligated to provide FDGL with thirty (30) day prior written notice to terminate and return the equipment to FDGL. If we terminate this Lease Agreement pursuant to Section 3.12 (b) due to a default by you, then you shall immediately return the Leased Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 3.7 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

3.8. Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Leased Equipment other than those owned or licensed by the manufacturer of the Leased Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Leased Equipment.

3.9. Limitation on Liability. We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Leased Equipment, including any damage or injury to persons or property caused by the Leased Equipment. We are not liable for the use or maintenance of the Leased Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Leased Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Leased Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

3.10. Warranties.

- a. All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.
- b. You warrant that you will only use the Leased Equipment for commercial purposes and will not use the Leased Equipment for any household or personal purposes.

3.11. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, liens against, or return of the Leased Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

3.12. Default; Remedies.

- a. If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing Agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the Merchant Agreement.
- b. Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Leased Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Leased Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts

owed to us and, if applicable, our recovery of the Leased Equipment, including entering onto your premises to recover the Leased Equipment. In any case, you shall also be responsible for our costs of collection, court costs as well as applicable shipping, repair and refurbishing costs of recovered Leased Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into a Merchant Agreement any funds held or available as security for payment under the terms of the Merchant Agreement, including funds available under the "Reserve Account; Security Interest" section of the Merchant Agreement, if applicable.

3.13. Assignment. You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. We intend to assign this Lease Agreement shortly after its execution to First Data Merchant Services Corporation.

3.14. Lease Guaranty. No guarantor shall have any right of subrogation to any of our rights in the Leased Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

3.15. Governing Law; Venue; Miscellaneous. This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the appropriate state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

3.16. Should your terminal become inoperable due to manufacturer's defect in our reasonable determination, we will provide you with a replacement unit at no cost for the term of your lease so long as you are actively processing with us. If the leased equipment is obsolete or defective due to operator error, you can upgrade to a new unit by entering into a new lease contract. For such replacements contact the POS Help Desk.

3.17. Notices. All notices must be in writing, if to you at your address appearing in the Application and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida, 33065. Attn: Lease Department, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received, if to you at the address appearing on the MPA or by any electronic means, including but not limited to the email address you have provided on the MPA. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. Customer Service toll free number 1-877-257-2094.

3.18. Entire Agreement. This Lease Agreement constitutes the entire Agreement between the parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.



EXHIBIT C

BANK'S FEE SCHEDULE



Government & Institutional Banking
100 W. Washington St., 25th Floor
Phoenix, AZ 85003

July 11, 2013

Eric Sanchez, c/o Jeff Primm
General Services Department, State Purchasing Division
1100 S. St. Francis Drive
Joseph Montoya Building, Rm 2016
Santa Fe, NM 87505

Dear Messrs. Eric Sanchez & Jeff Primm,

We appreciate the consideration to continue our partnership as Fiscal Agent for the State of New Mexico. Outlined below is our Best and Final Offer related to the RFP for Fiscal Agent Bank Services RFP#30-341-13-09855.

1. We will waive the first six months of analysis fees during the new contract period for the Fiscal Agent billing relationship.
2. We will provide 100 Desktop Deposit Scanners capable of scanning up to 75 checks a minute at no cost.
3. We will discount Lockbox Fees to help the State and its Agencies manage their collection costs – see highlighted price elements under “Lockbox Service” in the attached amended “Appendix F: Cost Proposal Form.”
4. We will waive the \$500 monthly Subscription Fee for Premium Liquidity & GL (formerly known as CEO Workstation.) – see highlighted price elements under “Information Services” in the attached amended “Appendix F: Cost Proposal Form.”

Please note that all other pricing forms included with the original submission of “Appendix F: Cost Proposal Form” remain in effect. If you have any question please do not hesitate to contact us.

Sincerely,

Mark Jensen, Senior Vice President
Regional Vice President

Jeff Sundheimer, Vice President
Relationship Manager

Together we'll go far



Appendix F: Cost Proposal Form

a. Costs Borne by the State

AFP Code	Service Description (Reflects Current Fiscal Agent Descriptor)	Estimated Monthly Volume	Offeror's Proposed Unit Price	Estimated Fees	Offeror Comments
Balance and Compensation Information					
	290 RECOUPMENT MONTHLY- FDIC CHARGE	70,000	0.1275	\$ 8,925.00	Pass through Fee
General Account Services					
10101	DESKTOP DEPOSIT CREDIT POSTED	270	\$ -	\$ -	Save \$1 per Paper Deposit Ticket
10300	CEO CYCLED STMT SUBSCRIPT RPT.WOBASE	189	\$ -	\$ -	No Charge for SHARE Remediation
10300	CEO E-STMT SUBSCRIPTION	189	\$ -	\$ -	No Charge for SHARE Remediation
10300	CEO E-STMT SUBSCRIPTION - ITEM	0,890	\$ -	\$ -	No Charge for SHARE Remediation
10000	ACCOUNT MAINTENANCE	3	\$ -	\$ -	No Charge for SHARE Remediation
10998	FAYEE VALID NON ACCT HLDYR-CHK CASH	2	\$ -	\$ -	No Charge for SHARE Remediation
10020	ZERO BALANCE MAINT ACCOUNT MAINT	1	\$ -	\$ -	No Charge for SHARE Remediation
10021	SUBACCOUNT MAINTENANCE	285	\$ -	\$ -	No Charge for SHARE Remediation
10000	ACCOUNT MAINTENANCE-CHEXSTOR	179	\$ -	\$ -	No Charge for SHARE Remediation
10021	ZERO BALANCE MONTHLY BASE	149	\$ -	\$ -	No Charge for SHARE Remediation
10100	CREDITS POSTED	2,182	\$ -	\$ -	
10101	CREDITS POSTED	6,987	\$ 1.00	\$ 5,987.00	Paper check deposit fee - per deposit ticket
10310	EDA STATEMENT - PAPER	4	\$ 10.00	\$ 40.00	Paper report
10920	EDA STATEMENT - SPECIAL	5	\$ -	\$ -	
10101	CNT DSB CREDIT POSTED-CH	276	\$ -	\$ -	
150340	OVERDRAFT CHARGE-PAID ITEM	1	\$ -	\$ -	
010000	ACCOUNT MAINTENANCE VIA CHK RETURN	1	\$ 50.00	\$ 50.00	Paper Check Return
Lockbox Services					
05011	WALBX NON-TRUNCATE PKG PRCP MO BASE	1	\$ -	\$ -	
05011R	WALBX MONTHLY BASE	2	\$ 100.00	\$ 200.00	
50000	WALBX REMIT PROCESSED EXPR MAIL	49	\$ 1.00	\$ 49.00	
50530	WALBX CORRESPONDENCE PROJECTS	747	\$ 0.30	\$ 224.10	
50100	WALBX STANDARD ITEM PROCESSED	980	\$ 0.35	\$ 338.00	
50112	WALBX ROUGH SORT	617	\$ -	\$ -	No Charge
05011R	WALBX DOCUMENT SCANNED	1,377	\$ -	\$ -	No Charge
50000	WALBX 7 YR COLOR IMAGE ARCHIVE	1,377	\$ -	\$ -	No Charge
05011A	WALBX CHECK IMAGE PHOTO COPY	421	\$ 0.15	\$ 63.15	
50420	WALBX IMAGE FILE IMPORT-IMAGE	1,377	\$ -	\$ -	No Charge
50120	WALBX VALUE ADDED KEYING	18,288	\$ 0.005	\$ 91.93	Reduce Charge 50%
50117	WALBX DOCUMENT REASSOCIATION	421	\$ 0.10	\$ 42.10	
05011F	WALBX HEALTHCARE PAPER RETURN	421	\$ 0.05	\$ 21.05	
50139	WALBX PKG MULTIPLE MAILING	18	\$ -	\$ -	
50301	WALBX DAILY DEPOSIT CUT	37	\$ -	\$ -	
05012	LOCKBOX CEO SUBSCRIPTION PER ITEM	149,819	\$ -	\$ -	
50000	LOCKBOX CEO SUBSCRIPTION MTHLY BASE	8	\$ -	\$ -	
50000	LOCKBOX CEO SUBSCRIPTION	3	\$ -	\$ -	
05031	WALBX SECURE EMAIL MNTLY BASE	1	\$ 150,000.00	\$ 150.00	Used by Health Dept - not paid by BOF
05000	WALBX REMIT PROCESSED CASH	1	\$ 10,000.00	\$ 10.00	Used by Health Dept - not paid by BOF
050100	WALBX REMIT PROCESS FOREIGN CR	1	\$ 10,000.00	\$ 10.00	Used by Health Dept - not paid by BOF
050131	WALBX MULTIPLE FAYEE 10-30	1	\$ 0,000.00	\$ -	Used by Health Dept - not paid by BOF
05000	WALBX 7 YR BAYIMAGE ARCHIVE	1	\$ 0.0100	\$ 0.01	Used by Health Dept - not paid by BOF
050000	WALBX ADDITIONAL CHECK PHOTO COPY	1	\$ 0.2500	\$ 0.25	Used by Health Dept - not paid by BOF
050117	WALBX DOC NONSTD REASSOCIATION	1	\$ 0.1000	\$ 0.10	Used by Health Dept - not paid by BOF
05011E	WALBX PAPER RETURN	1	\$ 0.0500	\$ 0.05	Used by Health Dept - not paid by BOF
050331	WALBX CUSTOM / DUPLICATE REPORT	1	\$ 7.0000	\$ 7.00	Used by Health Dept - not paid by BOF
05011P	WALBX RESTRICTIVE/SPECIAL PROCESSING	1	\$ 0.1000	\$ 0.10	Used by Health Dept - not paid by BOF
05011E	WALBX POST OFFICE RETURNED MAIL	1	\$ 2.0000	\$ 2.00	Used by Health Dept - not paid by BOF
050410	WALBX PKG US MAIL DELIVERY	1,000	\$ 1.0000	\$ 1.00	Used by Health Dept - not paid by BOF
Image File Download					
009999	DP1 MAINTENANCE PER PRODUCT	1,000	\$ 75.0000	\$ 75.00	Used by CSDB - not paid by BOF
Merchant Card Services					
79999	FMT GATEWAY MONTHLY BASE	3	\$ 50.000	\$ 150.00	
79999	FMT GATEWAY CREDIT CARD TRANSACTIONS	1,608	\$ 0.080	\$ 128.64	
79999	FMT GATEWAY ELECTRONIC CHECK TRANS	369	\$ 0.200	\$ 73.80	
79999	FMT GATEWAY SET UP - BASIC	0	\$ 150.000	\$ -	
Depository Services					
100410	CEO RETN ITEM SUBSCRIPTION PER ACCT	450	\$ -	\$ -	
100410	CEO RETN ITEM SUBSCRIPTION PER ITEM	348	\$ 0.0500	\$ 17.40	
100100	CASH VAULT MONTHLY BASE	36	\$ -	\$ -	
100015	CASH VAULT DEPOSIT NIGHT DROP #1	2,857	\$ 0.0010	\$ 2.86	
100015	CASH DEPT1 VERIFY IN CASH VAULT T1	25,521	\$ 0.0000	\$ 20.50	
100015	CASH DEPT1 VERIFY IN CASH VAULT T2	2,245	\$ 0.0003	\$ 2.19	
100144	CASH DEPT1 VERIFY IN CASH VAULT T3	231,419	\$ 0.0000	\$ 185.14	
100144	CASH VAULT COIN FURNISHED - ROLLED	25	\$ -	\$ -	
100501	CASH VAULT DEPOSIT ADJUSTMENT	1	\$ -	\$ -	
100141	CASH VAULT CASH ORDER TOUCHTONE	15	\$ -	\$ -	
100159	CASH VAULT CURRENCY/COIN DEPOSITED	1,647,850	\$ 0.0008	\$ 1,318.39	
100140	CASH VAULT CURRENCY PUNH-NONSTD	1,843	\$ 0.0006	\$ 1.11	

100189	CASH VAULT CURRENCY FURNISHED	2,000	\$	0.0008	\$	1.20	
100520	CASH VAULT ADJUSTMENT ADVISE US MAIL	1	\$	-	\$	-	
100600	DISPOSABLE NIGHT BAGS NEXT DAY PROCC	140	\$	-	\$	-	
100610	DEPOSIT LOCATION REPORTING - ITEM	1,363	\$	0.0500	\$	68.15	
100400	RETURN ITEM CONVERTED CK REDEPOSIT	13	\$	1.0000	\$	13.00	
100400	RETURN ITEM CONVERTED CK CHK BK IRO	9	\$	1.0000	\$	9.00	
100220	DEPOSITED CHECKS - ON US	27,888	\$	-	\$	-	No Charge for Wells Fargo On-Us Items
100220	DEPOSITED CHECKS	105,130	\$	0.1000	\$	10,513.00	
100220	DESKTOP DEPOSIT-FISCAL AGENT BANK DEPOSIT ITEM	1,158	\$	-	\$	-	No Charge for Wells Fargo On-Us Items
100220	DESKTOP DEPOSIT-NON FISCAL AGENT BANK DEP ITEM	2,472	\$	0.0600	\$	123.60	
100220	WHOLESALE LBR CHECKS DEPOSITED	938	\$	0.1000	\$	93.80	
100018	CASH DEPOSIT VER AT TELLER WINDOW	1,454,294	\$	0.0016	\$	2,326.87	Teller validation of cash
100015	CASH DEPOSIT POST VERIFY IN STORE	13,703	\$	0.0009	\$	10.96	Potential 60% Cost Savings vs. Teller Validation of Cash
100100	CASH VAULT BAG DEPOSIT PROCESSING	215	\$	-	\$	-	
100100	CASH VAULT MIXED DEPOSIT SURCHARGE	467	\$	1.0000	\$	467.00	
100140	CHANGE ORDER CHANGE BRANCH/STORE	99	\$	5.0000	\$	495.00	
100144	ROLLED COIN ORDERED - BRANCH/STORE	173	\$	0.1500	\$	25.95	
100040	CURRENCY CROSSEDSK1 - BRANCH/STORE	20,864	\$	0.0016	\$	33.34	
100400	RETURN ITEM CHARGE BACKS	207	\$	2.5000	\$	517.50	
100114	CEO RETURN ITEM RETRIEVAL - IMAGE	261	\$	-	\$	-	
100414	CEO RETURN ITEM SERVICE	249	\$	0.0500	\$	12.45	
100400	ADMIN RETURN ITEM REPAIRED ACH ITEM	2	\$	1.0000	\$	2.00	
100400	ADMIN RETURN ITEM REPAIRED AS CHECK	14	\$	1.0000	\$	14.00	
100400	RETURN ITEM SPECIAL INSTRUCTIONS	207	\$	-	\$	-	
100401	RETURN ITEM SPEC INSTRUCT MD BASE	20	\$	0.0000	\$	120.00	
100402	RETURN ITEM REDEPOSITED	326	\$	2.5000	\$	812.50	
Paper Disbursement Services							
150723	POSITIVE PAY EXCEPTION - CEO IMAGE	189	\$	-	\$	-	No Charge for Fraud Services
150240	PYMT AUTH MAX CHECK MONTHLY BASE	165	\$	-	\$	-	No Charge for Fraud Services
150290	PAYEE VALIDATION - STANDARD ITEM	1	\$	-	\$	-	No Charge for Fraud Services
150410	STOP PAYMENT - ONLINE	70	\$	2.00	\$	158.00	
151352	ONLINE IMAGE VIEW <90 DAYS - ITEM	478	\$	-	\$	-	
151352	ONLINE IMAGE VIEW >90 DAYS - ITEM	78	\$	-	\$	-	
151362	DESKTOP DEPOSIT IMAGES RETRIEVED	430	\$	0.05	\$	21.50	
150700	CEO CONT DISB SUBSCRIPTION BASE	12	\$	-	\$	-	
150400	CEO SEARCH	734	\$	-	\$	-	
150220	CONT DISB CHECK CASHED BRANCH	3,939	\$	-	\$	-	
150220	CONT DISB CASHED CHECK - BRANCH	139	\$	-	\$	-	
150000	CONT DISB ACCT MAINT W/CHXSTOR-CH	10	\$	25.00	\$	250.00	
150110	CONT DISB IMAGE CHECKS PAID - CH	91,822	\$	0.20	\$	18,296.40	Paper Warrants
150300	CONT DISB PERFECT POC PAY EXCEPT-CH	197	\$	1.50	\$	295.50	
150920	CONT DISB PERFECT PRESENT BASS-CH	10	\$	-	\$	-	
150120	CONT DISB PERFECT PRESENT CHK RTN-CH	26	\$	-	\$	-	
150300	MICR REJECTS THRU 1%	164	\$	-	\$	-	
150300	CONT DISBURSEMENT MICR REJECT	1,794	\$	-	\$	-	
150300	MICR REJECTS >1% THRU 2%	37	\$	-	\$	-	
150412	STOP PAYMENT - AUTO RENEWAL	263	\$	1.00	\$	263.00	
Paper Reconciliation Services							
200200	ARP REGISTER INPUT CEO - ITEM	80	\$	-	\$	-	No Charge for SHARE Remediation
200010	ARP MONTHLY BASE - FULL	10	\$	-	\$	-	No Charge for SHARE Remediation
200000	ARP MONTHLY BASE - PARTIAL	2	\$	-	\$	-	No Charge for SHARE Remediation
200201	ARP FULL RECON-ITEM	111,109	\$	-	\$	-	No Charge for SHARE Remediation
200301	ARP OUTPUT - TRANSMISSION	19	\$	-	\$	-	No Charge for SHARE Remediation
200310	ARP OPTIONAL REPORTS	36	\$	-	\$	-	No Charge for SHARE Remediation
200300	ARP AGED ISSUE RECORDS ON FILE-ITEM	44,318	\$	-	\$	-	No Charge for SHARE Remediation
200100	OUTGOING TRANSMISSION - PER ITEM	20,598	\$	-	\$	-	No Charge for SHARE Remediation
200306	ARP STATEMENT MONTHLY BASE CEO	14	\$	-	\$	-	No Charge for SHARE Remediation
General ACH Services							
250703	ACH CEO SUBSCRIPTION	91	\$	-	\$	-	No Charge for ACH Reports
250703	ACH CEO SUBSCRIPTION - ITEM	1,912	\$	0.050	\$	95.60	
250400	ACH CEO RETURN SUBSCRIPTION-ACCOUNT	89	\$	-	\$	-	No Charge for ACH Reports
251070	ACH PERFECT NOC PER ITEM	345,053	\$	0.005	\$	1,725.27	Saves NOC Reporting Fees
250201	ACH ORIGINATOR NEW COMP ID - SET UP	1	\$	-	\$	-	
250703	ACH CEO SUBSCRIPTION - ACCOUNT	91	\$	-	\$	-	No Charge for ACH Reports
250201	ELECTRONIC CREDITS POSTED	10,180	\$	-	\$	-	No Charge for Incoming ACH Items
250600	ACH MONTHLY BASE	44	\$	-	\$	-	
250800	ACH VENDOR MONTHLY BASE	1	\$	-	\$	-	
250400	ACH CEO RETURN SUBSCRIPTION	83	\$	-	\$	-	No Charge for ACH Reports
250400	ACH CEO RETURN SUBSCRIPTION - ITEM	18,947	\$	0.040	\$	847.35	
250102	ACH ONE DAY ITEM	247,287	\$	0.025	\$	6,182.18	Saves \$ 226 versus Paper Warrant
250102	ACH TWO DAY ITEM	189,404	\$	0.025	\$	4,960.10	Saves \$ 226 versus Paper Warrant
250102	ACH SAME DAY	23,051	\$	0.025	\$	576.28	
250120	ACH ORIGINATED - ADDENDA REC	17,660	\$	0.050	\$	877.50	
250501	ACH ORIGINATOR/REJECT DATA - FILE	199	\$	-	\$	-	
250202	ACH RECEIVED ITEM	7,247	\$	-	\$	-	No Charge for Incoming ACH Items
250202	ACH RETURN ITEM - FAX ADVISE	1	\$	5.000	\$	5.00	Paper Fax Report
250302	ACH RET ITEM-INFO REPORTING ADVISE	2,787	\$	0.050	\$	139.35	
250500	ACH PAYMENTS ONLINE BATCH RELEASE	1	\$	-	\$	-	
250501	ACH TRANSMISSION CHARGE	254	\$	1.000	\$	254.00	

250710	ACH FAX SERVICE	4	\$	5.000	\$	20.00	
250710	ACH MAIL SERVICE	4	\$	-	\$	-	No Charge for ACH Reports
250302	ACH RETURN ITEM-TRANSMISSION ADVICE	73	\$	0.090	\$	3.65	
250420	ACH DELETE - ITEM	4	\$	2.500	\$	10.00	
250442	ACH REVERSAL - ITEM	14	\$	2.500	\$	35.00	
250102	INTERNET ACH - TWO DAY ITEM	20	\$	0.025	\$	0.50	
260000	INTERNET ACH FEE	1	\$	-	\$	-	
251500	ACH PAYMENTS ONLINE BATCH RELEASE	1	\$	-	\$	-	
250720	ACH REJECT NOTIFICATION	1	\$	-	\$	-	
250102	SMART DECISION ACH TRANSIT	5,840	\$	0.025	\$	146.00	
250102	SMART DECISION VAULT ACH TRANSIT	1	\$	0.025	\$	0.03	Save \$.075 per paper check deposited
109999	SMART DECISION ELEC CHECK ACH ONUS	1	\$	-	\$	-	No Charge for Wells Fargo On-Us Items
109999	SMART DECISION ELEC CHK ACH TRANSIT	1	\$	0.025	\$	0.03	Save \$.075 per paper check deposited
100220	ELECTRONIC DEPOSIT - CHECK WFB	1	\$	0.0000	\$	-	Used by MVD for Citation Proc Electronic Deposit
100224	ELECTRONIC DEPOSIT - CHECK NGV WFB	1	\$	0.0500	\$	0.05	Used by MVD for Citation Proc Electronic Deposit
100230	ELECTRONIC DEPOSIT - DEF ADJUSTMENT	1	\$	0.0000	\$	-	Used by MVD for Citation Proc Electronic Deposit
250720	ACH CUSTOMER REPORTS	2	\$	-	\$	-	No Charge for ACH Reports
251010	ACH SPECIAL INVESTIGATION	3	\$	-	\$	-	No Charge for ACH Reports
251050	ACH CEO FRAUD FILTER STOP WITHLYBASE	47	\$	-	\$	-	No Charge for Fraud Services
251050	ACH CEO FRAUD FILTER REVIEW MO BASE	177	\$	-	\$	-	No Charge for Fraud Services
251050	ACH CEO FRAUD FILTER STOP MO BASE	47	\$	-	\$	-	No Charge for Fraud Services
251052	ACH CEO FRAUD FILTER STOP - ITEM	2	\$	2.000	\$	4.00	
251053	ACH CEO FRAUD FILTER REVIEW - ITEM	415	\$	2.000	\$	832.00	
250302	ACH NOC - TRANSMISSION ADVICE	35	\$	0.050	\$	1.75	
251070	ACH WELLS FARGO NOC - TRANS ADVICE	2	\$	0.050	\$	0.10	
251070	ACH WELLS FARGO NOC-INFO REPT ADVIC	223	\$	-	\$	-	No Charge for NOC reporting
251070	ACH NOC - FAX ADVICE	1	\$	10.000	\$	10.00	Paper Fax Report
250302	ACH NOC - INFO REPORTING ADVICE	1,105	\$	-	\$	-	
ACH Concentration Services							
260000	CASH CON INPUT TOUCHTONE ADDL	6	\$	-	\$	-	
260000	CASH CONCENTRATION MONTHLY BASE	1	\$	100.00	\$	100.00	
260000	CASH CON DEPOSIT TRANSFRNTHLY BASE	1	\$	-	\$	-	
260500	CASH CONCENTRATION ACH TRANS FILE	19	\$	1.00	\$	19.00	
260500	CASH CONCENTRATION ACH TRANS ITEM	208	\$	0.10	\$	20.80	
260120	CASH CONCENTRATION INACTIVE LOC	28	\$	-	\$	-	
260400	CASH CONCENTRATION TERM RPT-FIELD	440	\$	0.50	\$	220.00	
260400	CASH CONCENTRATION TERMINAL RPT-PC	59	\$	0.75	\$	29.25	
260310	CASH CONCENTRATION INPUT TOUCHTONE	207	\$	1.00	\$	207.00	
260310	CASH CONCENTRATION EXT STORAGE-FIELD	213	\$	0.075	\$	15.98	
260311	CASH CONCENTRATION INCHARGE VOICE	1	\$	7.50	\$	7.50	
260800	CASH CONCENTRATION ADDCHG-LOCATION	1	\$	7.50	\$	7.50	
EDI Payment Services							
300524	CEO TREAS INFO RPT EDI SUBSC MORAGE	20	\$	-	\$	-	No Charge for Incoming ACH Reporting
300200	RECEIVABLES MANAGER OUTGOING TRANS	90	\$	-	\$	-	
300200	RECEIVABLES MANAGER RECDV ACCENDA	6,486	\$	0.05	\$	324.30	
300110	RECEIVABLES MANAGER MONTHLY BASE	2	\$	100.00	\$	200.00	
300200	RECEIVABLES MANAGER OUTGOING TRANS	1	\$	0.0000	\$	-	
300624	CEO TREASURY INFO REPTING-EDI MO BASE	20	\$	-	\$	-	No Charge for Incoming ACH Reporting
300624	CEO TREASURY INFO REPTING-EDI ITEM	20	\$	-	\$	-	No Charge for Incoming ACH Reporting
300524	CEO TREAS INFO RPT EDI ACCENDA	1	\$	0.0000	\$	-	No Charge for Incoming ACH Reporting
300200	RECEIVABLES MGR PER ITEM-ACH	6,594	\$	0.05	\$	329.70	Save 3.36 versus a paper check for each deposit
Electronic Bill & Invoice Presentment Services							
310200	E-BILL EXPRESS - BILL PRESENTMENT	60	\$	0.20	\$	12.00	
310001	E-BILL EXPRESS WITHLY BASE & BK BILLS	1	\$	300.00	\$	300.00	
Internet Payment Initial Oral Services							
320110	E-BILL EXPRESS-ACH PAYMENT	161	\$	0.25	\$	40.25	Used by PERA for ACH entries
Wires & Other Funds Transfer Services							
350800	WIRE IN REPAIR SURCHARGE	22	\$	5.00	\$	110.00	
350400	REC MOR WIRE ITEMS	280	\$	0.50	\$	144.00	
350402	WIRE DETAIL RPT SUBSCRIPTION-ACCT	58	\$	-	\$	-	No Charge for Wire Reporting
350402	WIRE DETAIL RPT SUBSCRIPTION-ACCT	68	\$	-	\$	-	No Charge for Wire Reporting
350402	WIRE DETAIL RPT SUBSCRIPTION-ITEM	313	\$	-	\$	-	No Charge for Wire Reporting
350300	WIRE IN DOMESTIC	605	\$	-	\$	-	No Charge for Incoming Wires
350300	WIRE IN - INTERNATIONAL	1	\$	10.00	\$	10.00	
350411	WIRE MAIL CONFIRMATION	1	\$	1.00	\$	1.00	
350104	WIRE OUTGOING DOMESTIC-CEO	168	\$	2.50	\$	420.00	
350124	WIRE - BOOK TRANSFER - CEO	1	\$	-	\$	-	No Charge for Book Transfers
Information Services							
401001	PHOTOCOPIY CUSTOMER SERVICE - ITEM	6	\$	-	\$	-	No Charge for Images
400003	DESKTOP DEPOSIT REPORT MTHLY BASE	26	\$	10.00	\$	260.00	
400701	DESKTOP DEPOSIT REPORT PER ITEM	1,621	\$	0.05	\$	81.05	Save \$.05 versus a paper check deposit
408998	DESKTOP DEPOSIT DISCRETIONARY DATA	1,044	\$	0.05	\$	52.20	Save \$.05 versus a paper check deposit
400224	CEO DEPOSIT DETAIL SUBSCRIPT ITEM	1	\$	0.05	\$	0.05	
400003	CEO DEPOSIT DETAIL SUBSCRIPT MOBASE	1	\$	-	\$	-	
400000	CEO PREV DAY SUBSCRIPTION MTHLYBASE	213	\$	-	\$	-	No Charge for SHARE Remediation
400001	CEO PREV DAY SUBSCRIPTION DETL ITEM	133,444	\$	0.05	\$	6,672.20	
400003	CEO INTRADAY SUBSCRIPTION MTHLYBASE	370	\$	-	\$	-	No Charge for SHARE Remediation
400224	CEO INTRADAY SUBSCRIPTION - ITEM	80,184	\$	0.05	\$	4,009.20	
400222	CEO EVENT MESSAGING SERVICE - EMAIL	1,515	\$	-	\$	-	
400940	CEO WIRE INQUIRY DETAIL - PER ITEM	3	\$	1.00	\$	3.00	

300502	ELECTRONIC DOC DELIV EMAIL PAGE	0	0.10000	\$ -	Electronic Invoice Page Email to Vendors
MSC-TM					
309999	PAYMENT MANAGER CHECK/DOC POSTAGE	0	1.00000	\$ -	
Positive Pay					
150299	PAYEE VALIDATION STANDARD ITEM	0	\$ -	\$ -	No Charge for Fraud Services
Receivables Manager					
060408	REC MGR WHOLESALE LBN ITEMS	0	0.99000	\$ -	
300200	RM MERCHANT ITEM RECEIVED	0	0.00000	\$ -	
300212	RECEIVABLE MGR DESKTOP DEP ITEM	0	0.00000	\$ -	
Wholesale Lockbox					
050135	WLBX STOP POSITIVE FILE MTHLY BASE	0	100.00000	\$ -	
050500	WLBX ONLINE DECISION MONTHLY BASE	0	50.00000	\$ -	
050500	WLBX ONLINE DEC EXCEPTIONS POST	0	0.20000	\$ -	
050500	WLBX ONLINE DECISION ITEMS REJECT	0	0.25000	\$ -	
Payment Manager					
080100	PAYMENT MANAGER COMM L CRD PMT TRANS	0	0.00000	\$ -	Save \$.30 versus Paper Warrant * Revenue Share
080100	PAYMENT MGR COMM L CRD CCR/PMT	0	0.00000	\$ -	Save \$.30 versus Paper Warrant * Revenue Share

300100	PAYMENT MANAGER DOMESTIC ACH TRAN	0	0.02500	\$	-	Save: \$.225 versus Paper Warrant
300105	PAYMENT MGR RPT SUBSCRIPTION MOBASE	0	0.00000	\$	-	
309898	PAYMENT MGR CHK 1ST PAGE NEXT DAY	0	0.25000	\$	-	
309899	ELECTRONIC COMMERCE INVESTIGATION	0	0.00000	\$	-	
308999	PAYMENT MGR CHK ADDL PAGE NEXT DAY	0	0.15000	\$	-	
300330	PAYMENT MGR MANUAL CHECK PULL	0	0.00000	\$	-	
300330	PAYMENT MGR REJECT REPAIR DUPLICATE	0	0.00000	\$	-	
300222	PAYMENT MANAGER BOOK TRANSER	0	0.00000	\$	-	
300000	PAYMENT MANAGER MONTHLY BASE	0	0.00000	\$	-	
300100	ELECTRONIC COMMERCE DIRECT TRANS	0	0.00000	\$	-	
300289	PAYMENT MANAGER ACH ADDENDA	0	0.00000	\$	-	
151870	PAYMENT MANAGER CHECK ISSUE FILE	0	0.00000	\$	-	
300524	PAYMENT MANAGER DOMESTIC DRAWDOWN	0	0.00000	\$	-	
300000	PAYMENT MANAGER ENHANCED MTHLY BASE	0	0.00000	\$	-	
151860	PAYMENT MANAGER PACKAGE PREPARATION	0	0.00000	\$	-	
300529	PAYMENT MGR ADDL PG DUPLEX-NEXT DAY	0	0.15000	\$	-	
Set-up Fees						
251120	INTERNET ACH SET UP FEE	0	0.00	\$	-	Waived
251001	ACH FRAUD FILTER - SET UP	0	0.00	\$	-	Waived
109999	WFED IMPLEMENTATION - STANDARD	0	1,000.00	\$	-	At Cost
310601	E-BILL EXPRESS SETUP 50K-150K BILLS	0	1,500.00	\$	-	At Cost
310601	E-BILL EXPRESS SETUP 5K-50K BILLS	0	1,500.00	\$	-	At Cost
310601	E-BILL EXPRESS SETUP <5K BILLS	0	1,500.00	\$	-	At Cost
310600	PAYMENT & DELIVERY CUSTOMER SETUP	0	0.00	\$	-	Waived
300300	PAYMENT MANAGER SET UP	0	0.00	\$	-	Waived
300341	EC IMPLEMENTATION DEV HOURS	0	0.00	\$	-	Waived
300300	PAYMENT MANAGER CHECK/DCC SET UP	0	0.00	\$	-	Waived
300301	PAYMENT MANAGER CUSTOM SET UP	0	0.00	\$	-	Waived
300300	PAYMENT MANAGER ENHANCED SET UP	0	0.00	\$	-	Waived
300300	PAYMENT MGR ENHANCED CUSTOM SETUP	0	0.00	\$	-	Waived
300321	RECEIVABLES MANAGER CUSTOM SETUP	0	2,500.00	\$	-	At Cost
300320	RECEIVABLES MANAGER SET UP	0	0.00	\$	-	Waived
050138	WLBX SET UP	0	0.00	\$	-	Waived

b. Costs Borne by Reloadable Debit Card Holders

*DWS, CSED, and CYFD's Reloadable Debit Card programs have about 168,000 Enrollees who receive average total monthly disbursements totaling about \$131 million.

Service Description New Mexico Unemployment Insurance	Estimated Monthly Volume	Offeror's Proposed Unit Price	Offeror Comments
ATM and Purchase Transaction Fees			
ATM Withdrawal Domestic (U.S. Dept. of Labor requires at least one free per week for DWS UIP Program)	*	\$1.50 per each	1 FREE per weekly deposit at any Wells Fargo Bank ATM
ATM Withdrawal International	*	\$3.50	
ATM Balance Inquiries	*	FREE	
ATM Transaction Decline	*	\$0.50 per each	1 FREE per weekly deposit
Signature-Based Purchase at Visa Merchants	*	FREE	
Pinned Point of Sale Purchase	*	FREE	
Other Service Fees			
Automated Customer Service Inquiry	*	\$0.50 per each	1 FREE per weekly deposit
Live Customer Service Inquiry	*	FREE	
International Customer Service Inquiry	*	FREE	
PIN Changes	*	FREE	
Emergency Transfer for remaining balance Domestic	*	\$5.00	
Emergency Transfer for remaining balance International	*	\$5.00	
Teller Cash Access	*	\$5.00 per each	1 FREE per weekly deposit
Card Replacement Domestic	*	\$15.00 per each	1 FREE per year
Card Replacement- Express Delivery	*	\$15.00	
Card Replacement International	*	Price provided at time of request, varies by country	
Foreign Exchange Fee	*	2% of U.S. dollar amount of transaction	
Negative Balance Fee	*	NA	
ACH debits for bill payments	*	\$0.75	
Duplicate Statement	*	FREE online	
Other Prepaid Debit Card Services			
Instant Mobile Balance Alert	*	\$0.10 per each	1 FREE per month

		Estimated Monthly	Offeror's Proposed	
Service Description New Mexico Child Support and CYFD	Volume	Unit Price	Offeror Comments	
ATM and Purchase Transaction Fees				
ATM Withdrawal Domestic (U.S. Dept. of Labor requires at least one free per week for DWS UIP Program)	*	\$1.50 per each	4 FREE per month of any Wells Fargo Bank ATM	
ATM Withdrawal International	*	\$3.50		
ATM Balance Inquiries	*	FREE		
ATM Transaction Decline	*	\$0.50 per each	4 FREE per month	
Signature-Based Purchase at Visa Merchants	*	FREE		
Pinned Point of Sale Purchase	*	FREE		
Other Service Fees				
Automated Customer Service Inquiry	*	\$0.50 per each	4 FREE per month	
Live Customer Service Inquiry	*	FREE		
International Customer Service Inquiry	*	FREE		
PIN Changes	*	FREE		
Emergency Transfer for remaining balance Domestic	*	\$5.00		
Emergency Transfer for remaining balance International	*	\$5.00		
Teller Cash Access	*	\$5.00 per each	4 FREE per month	
Card Replacement Domestic	*	\$15.00 per each	1 FREE every 12 months from last issuance	
Card Replacement- Express Delivery	*	\$15.00		
Card Replacement International	*	Price provided at time of request, varies by country		
Foreign Exchange Fee	*	2% of U.S. dollar amount of transaction		
Negative Balance Fee	*	NA		
ACH debits for bill payments	*	\$0.75		
Duplicate Statement	*	FREE online		
Other Prepaid Debit Card Services				
Instant Mobile Balance Alert	*	\$0.10 per each	1 FREE per month	

EXHIBIT D

BANK'S AVAILABILITY SCHEDULE

Availability Schedule

Wells Fargo offers accelerated funds availability for deposits made by the State through all deposit channels.

Checks deposited	Collected funds
Wells Fargo Bank checks	same day
U.S. government checks	one day
All other checks	one day

EXHIBIT E

**COMMERCIAL ACCOUNT AGREEMENT, MASTER TREASURY MANAGEMENT
AGREEMENT, AND SERVICE DESCRIPTIONS**

ACCEPTANCE OF SERVICES

WELLS
FARGO

Part I – Certification

The person(s) signing this Acceptance of Services ("Acceptance") certifies/certify that:

- subject to the provisions of The Fiscal Agent Agreement*
- (a) the company identified in the signature block of this Acceptance ("Company") has received and agrees to be bound by the Service Documentation, as defined in Wells Fargo Bank, N.A.'s ("Bank") Master Agreement for Treasury Management Services;
 - (b) Company has granted the person(s) signing this Acceptance the authority on Company's behalf to (i) execute this Acceptance, (ii) enter into other agreements with Bank for treasury management services Bank offers on or after the Effective Date of this Acceptance (each, a "Service") and (iii) amend, terminate or otherwise act on behalf of Company with respect to this Acceptance and such other agreements and Services; and
 - (c) Company's use of any Service, including without limitation each Service Company begins using after the Effective Date of this Acceptance, confirms Company's receipt of and agreement to be bound by the Service Documentation relating to that Service.

Part II – ACH Origination Services

A. Description of Security Procedure.

1. **General.** An "Entry" is an automated clearing house ("ACH") debit or credit entry issued in Company's name, and a "File" is the data file or batch release used to transmit one or more Entries (or a communication amending or canceling an Entry or File) to Bank. Bank will verify each File Bank receives in Company's name solely in accordance with the security procedure(s) Company elects in this Acceptance (each, a "Security Procedure"). The purpose of the Security Procedure is to verify the authenticity of a File, not to detect an erroneous or duplicate Entry or File.
2. **Commercially Reasonable.** Company has determined (a) the Security Procedure best meets Company's requirements with regard to the size, type and frequency of Files issued by Company to Bank and (b) the Security Procedure is commercially reasonable. Company refuses to have its Files verified by any security procedure other than the Security Procedure.
3. **Binding Instructions.** Company will be responsible for any erroneous or duplicate Entry or File Bank receives in Company's name. Company agrees to be bound by each Entry and File, or request to cancel or amend an Entry or File, whether or not authorized by Company, issued in Company's name and accepted by Bank in compliance with the Security Procedure.
4. **Confidentiality.** Company and Bank will preserve the confidentiality of the Security Procedure and any passwords, codes, security devices and related instructions provided by Bank. If Company becomes aware of a breach, or suspects that a breach may occur, it will immediately notify Bank.
5. **Authorized Person(s).** Company will promptly notify Bank in writing of the identity of each person authorized to receive information regarding the Security Procedure (each, an "Authorized Person") and when a person is no longer an Authorized Person. Company will maintain effective internal procedures to safeguard against unauthorized Entries or Files and warrants that no individual will be allowed to initiate an Entry or File without proper supervision and safeguards.

B. Election of Security Procedure(s).

The Security Procedure(s) Company has elected for ACH origination is/are:

Commercial Electronic Office® (CEO®)

CEO is Bank's electronic banking portal that is accessed via the Internet. Authorized users may access Bank's CEO Internet ACH Service through the portal. CEO security procedures include log-on credentials specified by Bank (that may include a Company ID, user ID and password) and any other authentication or authorization process Bank requires from time to time. Bank will use the CEO security procedures to authenticate each File received through CEO in Company's name.

Payment Manager®

- Secure Application File Exchange Transmission ("SAFE-T").** This transmission protocol offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment File transmitted to Bank in Company's name.
- Machine-to-Machine ("M2M").** This transmission protocol uses an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL). Bank uses digital certificates to authenticate each File transmitted to Bank in Company's name.
- Connect:Direct with Secure +.** This transmission protocol is used to connect Company's mainframe environment to Bank's mainframe environment. Secure+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Bank uses an agreed upon ID password combination and a token card to authenticate each File transmitted to Bank in Company's name. Connect Direct and Secure + are trademarks of Sterling Commerce.
- Value-Added Network ("VAN").** With this transmission protocol, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting files may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each File transmitted to Bank through the VAN in Company's name.

Direct Origination.

- Secure Application File Exchange Transmission ("SAFE-T").** This transmission protocol offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment File transmitted to Bank in Company's name.
- Connect:Direct with Secure +.** This transmission protocol is used to connect Company's mainframe environment to Bank's mainframe environment. Secure+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Bank uses an agreed upon ID password combination and a token card to authenticate each File transmitted to Bank in Company's name. Connect Direct and Secure + are trademarks of Sterling Commerce.

SWIFT®

SWIFT has established procedures for controlling access to SWIFT messaging services (each, an "Access Control") that may include without limitation access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages including without limitation Files based on SWIFT message type prior to accepting them for routing as SWIFT messages (each, an "Authenticated Message"). This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys ("BKE"), entered into a relationship management application ("RMA") agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time (each, an "Authentication Procedure").

Security Procedure Elected by Company's Third Party Service Provider

Company is utilizing a Third Party Service Provider ("TPSP") as defined in the ACH Rules to originate Entries and Files on Company's behalf. Bank will authenticate each File transmitted to Bank in Company's name in accordance with the security procedure the Company's TPSP has elected. Company will notify Bank of any change to Company's TPSP in a manner affording Bank a reasonable opportunity to act on the information. Company's TPSP is:

Third Party Service Provider: _____

Contact Person: _____

Telephone: _____ Fax: _____

Non-Standard Security Procedure

Company has refused to utilize any of the security procedures described above and has elected to use the Security Procedure set forth in Attachment B.

Part III – Wire Transfer Services

A. Description of Security Procedure.

- 1. General.** Bank will verify instructions to transfer funds from Company's Account that Bank receives in Company's name (each, a "Payment Order") solely in accordance with the security procedure(s) Company elects in this Acceptance (each, a "Security Procedure"). The purpose of the Security Procedure is to verify the authenticity of a Payment Order, not to detect an erroneous or duplicate Payment Order.
- 2. Commercially Reasonable.** Company has determined (a) the Security Procedure best meets Company's requirements with regard to the size, type and frequency of Payment Orders issued by Company to Bank and (b) the Security Procedure is commercially reasonable. Company refuses to have its Payment Orders verified by any security procedure other than the Security Procedure.
- 3. Binding Instructions.** Company will be responsible for any erroneous or duplicate Payment Order Bank receives in Company's name. Company agrees to be bound by each Payment Order, or request to cancel or amend a Payment Order, whether or not authorized by Company, issued in Company's name and accepted by Bank in compliance with the Security Procedure.

4. **Confidentiality.** Company and Bank will preserve the confidentiality of the Security Procedure and any passwords, codes, security devices and related instructions provided by Bank. If Company becomes aware of a breach, or suspects that a breach may occur, it will immediately notify Bank.
5. **Authorized Person(s).** Company will promptly notify Bank in writing of the identity of each person authorized to receive information regarding the Security Procedure (each, an "Authorized Person") and when a person is no longer an Authorized Person. Company will maintain effective internal procedures to safeguard against unauthorized Payment Orders and warrants that no individual will be allowed to initiate a Payment Order without proper supervision and safeguards.

B. Election of Security Procedure(s).

The Security Procedure(s) Company has elected for Wire Transfers is/are:

Voice

Bank's voice initiation security procedure consists of confirming that the personal identification number ("PIN") accompanying a Payment Order corresponds with a valid PIN assigned to Company for voice-initiated Payment Orders.

- Telephone Verification Service.** If Bank receives a voice-initiated, non-repetitive Payment Order of \$_____ or more, Bank will make one attempt to telephone person(s) designated by Company on the most current setup form for Company in Bank's records to authenticate the Payment Order. If Bank is unable to complete the call, Bank will not process the Payment Order.

Commercial Electronic Office[®] (CEO[®])

CEO is Bank's electronic banking portal that is accessed via the Internet. Authorized users may access Bank's CEO Wire Transfer Service through the portal. CEO security procedures include log-on credentials specified by Bank that may include a Company ID, user ID and password and any other authentication or authorization process Bank requires from time to time. Bank will use the CEO security procedures to authenticate each Payment Order received through CEO in Company's name.

Payment Manager[®]

- Secure Application File Exchange Transmission ("SAFE-T").** This transmission protocol offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment File transmitted to Bank in Company's name.
- Machine-to-Machine ("M2M").** This transmission protocol uses an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL). Bank uses digital certificates to authenticate each File transmitted to Bank in Company's name.
- Connect:Direct with Secure +.** This transmission protocol is used to connect Company's mainframe environment to Bank's mainframe environment. Secure+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Bank uses an agreed upon ID password combination and a token card to authenticate each File transmitted to Bank in Company's name. Connect Direct and Secure + are trademarks of Sterling Commerce.

- Value-Added Network ("VAN").** With this transmission protocol, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting files may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each File transmitted to Bank through the VAN in Company's name.

Direct Origination.

- Secure Application File Exchange Transmission ("SAFE-T").** This transmission protocol offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment File transmitted to Bank in Company's name.

- Connect:Direct with Secure +.** This transmission protocol is used to connect Company's mainframe environment to Bank's mainframe environment. Secure+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Bank uses an agreed upon ID password combination and a token card to authenticate each File transmitted to Bank in Company's name. Connect Direct and Secure + are trademarks of Sterling Commerce.

SWIFT®

SWIFT has established procedures for controlling access to SWIFT messaging services (each, an "Access Control") that may include without limitation access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages based on SWIFT message type prior to accepting them for routing as SWIFT messages (each, an "Authenticated Message"). This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys ("BKE"), entered into a relationship management application ("RMA") agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time (each, an "Authentication Procedure").

Non-Standard Security Procedure

Company has refused to utilize any of the security procedures described above and has elected to use the Security Procedure set forth in Attachment B.

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Part IV – Designation of Wells Fargo Stagecoach Sweep® Option(s).

A. Investment Sweep Options and Money Market Savings Account Option

Company elects the following Option (check one box only):

- Wells Fargo Stagecoach Sweep Preferred Option.
- Wells Fargo Stagecoach Sweep Preferred Option with secondary Wells Fargo Stagecoach Sweep, Repurchase Agreement Option.
- Wells Fargo Stagecoach Sweep Commercial Paper Option.
- Wells Fargo Stagecoach Sweep Repurchase Agreement Option with secondary Wells Fargo Stagecoach Sweep, Preferred Option.
- Wells Fargo Stagecoach Sweep Repurchase Agreement Option.
- Wells Fargo Stagecoach Sweep Money Market Mutual Fund Option.
(Check one box only.)
 - Wells Fargo Advantage Money Market Fund - Fund 3951.
 - California Municipal Money Market Fund - Class A - Fund 29.
 - Treasury Plus Money Market Fund - Class A - Fund 453.
 - National Tax-Free Money Market Fund - Class A - Fund 452.
 - 100% Treasury Money Market Fund - Service Class - Fund 8.
- Wells Fargo Money Market Savings Account Sweep Option.

B. Credit Sweep Option

Company elects Bank's Credit Sweep Option.

• Company's LOC number is _____.

C. Additional Information

• Company's Checking Account Number: _____.

• Statements and/or Confirmations will be sent to Company by electronic means unless otherwise requested by Company. Electronic means include Bank's Commercial Electronic Office®, facsimile and/or Secure E-Mail.

Part V – Signature and Effective Date.

Agreed To and Accepted By:

Company: _____

By: _____

Name: _____

Title: _____

Effective Date: _____

ACCOUNT RECONCILIATION PLAN SERVICE SERVICE DESCRIPTION



- 1. Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Account Reconciliation Plan service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
- 2. Description of Services.** Bank's ARP Services enable Company to use Bank to (a) store information about Items Company issues on demand deposit accounts that Company enrolls in the Services (each, an "Account"); and (b) process the information in accordance with the Service option(s) that Company elects during the set up process for the Services and from time to time thereafter. Bank's User Guide for the Services details the Service options. "Item" is defined in Bank's Commercial Account Agreement.
- 3. Issued Check Information.** If Company elects Bank's full ARP Service, each Business Day prior to the cutoff time Bank separately discloses, Company will provide Bank with the issue date, serial number and dollar amount of each Item Company issues on the Account ("Issued Check Information") using the communication channel(s) Company elects. If Company elects Bank's Deposit Location Reporting Service, Company will provide Bank with a list of Company's location numbers and names and may amend the list from time to time by notifying Bank in writing.
- 4. Stop Payment Orders.** If Company uses the Service to place a stop payment order on any Item, Company understands that (a) Bank's Commercial Account Agreement governs the stop payment order; (b) each stop payment order is subject to Bank's verification that the Item described in the stop payment order has not been paid; and (c) this verification may occur a minimum of ninety (90) minutes after the time Company transmits the stop payment order to Bank.



ACH ORIGINATION SERVICE DESCRIPTION

1. **Introduction.** This Service Description is part of the Service Documentation governing Wells Fargo Bank, N. A. ("Bank") ACH Origination service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is identified in the Acceptance.
2. **Description of Services.** The Service enables Company to originate automated clearing house ("ACH") credit and debit entries in accordance with the National Automated Clearing House Association Operating Rules and any applicable local ACH rules (collectively, the "ACH Rules"). Company will maintain one or more deposit account(s) at Bank or Bank's affiliate (each, an "Account"), that Bank may use to process such Entries. An "Entry" is an ACH debit or credit entry issued in Company's name, and a "File" is the data file or batch release used to transmit one or more Entries to Bank. Section 5 of this Service Description describes (a) the means Bank offers to Company for transmitting Files to Bank (each, an "Initiation Method") and (b) the means Bank will use to verify Company's authorization of a File or a communication amending or canceling an Entry or File (each, a "Security Procedure"). When Bank acts with respect to an Entry as both the originating depository financial institution ("ODFI") and receiving depository financial institution ("RDFI"), as ODFI and RDFI are defined by the ACH Rules, the Entry is an "on-us Entry."
3. **Preparation of Entries and Files; Processing Schedules.** Company will prepare each File in accordance with the ACH Rules and the guidelines Bank separately makes available to Company. Bank will process each File in accordance with Bank's then current processing schedule and any instructions regarding the date an Entry is to be settled that Company furnishes with the Entry provided (a) Bank receives the File by Bank's applicable cutoff time on a Business Day and (b) the ACH is open for business. Files will be deemed received by Bank when the transmission of the File to Bank is completed and authenticated in compliance with the Security Procedure. If Bank receives a File after Bank's applicable cutoff time or on a day when the ACH is not open for business, the File will be treated as having been received prior to Bank's applicable cutoff time on the next Business Day on which the ACH is open for business. A "Business Day" is every day except Saturday, Sunday and federal holidays.
4. **Inconsistency of Name and Number.** If an Entry describes a "Receiver" (as defined in the ACH Rules), both by name and identifying number, the RDFI may pay the Entry on the basis of the identifying number, even if the number identifies a person different from the named Receiver. If an Entry describes the RDFI both by name and identifying number, Bank, a gateway operator or another financial institution handling the Entry may rely on the identifying number to identify the RDFI, even if the identifying number refers to an institution other than the named RDFI.
5. **Initiation Methods and Security Procedures.** This section lists the Initiation Methods and describes the Security Procedures Bank offers for ACH origination. Company's elections regarding Initiation Methods and Security Procedures are set forth in the Acceptance.

5.1. Commercial Electronic Office® (CEO®) Initiation Method.

CEO is Bank's electronic banking portal that is accessed via the Internet. Authorized users may access Bank's CEO Internet ACH Service through the portal. CEO security procedures include log-on credentials specified by Bank (that may include a Company ID,

user ID and password) and any other authentication or authorization process Bank requires from time to time. Bank will use the CEO security procedures to authenticate each File received through CEO in Company's name.

5.2. Direct Origination Initiation Method.

Secure Application File Exchange Transmission ("SAFE-T"). This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each File transmitted to Bank in Company's name.

IBM® - Sterling Connect:Direct® with Secure Plus+. Secure Plus+ is an add-on to Connect:Direct® to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Connect:Direct® is a registered trademark of Sterling Commerce, Inc., an IBM Company.

5.3. Payment Manager® Initiation Method.

Secure Application File Exchange Transmission ("SAFE-T"). This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each File transmitted to Bank in Company's name.

Machine-to-Machine ("M2M"). This transmission method uses an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL). Bank uses digital certificates to authenticate each File transmitted to Bank in Company's name.

IBM® - Sterling Connect:Direct® with Secure Plus+. Secure Plus+ is an add-on to Connect:Direct® to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Connect:Direct® is a registered trademark of Sterling Commerce, Inc., an IBM Company.

Value-Added Network ("VAN"). With this transmission method, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting Files may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each File transmitted to Bank through the VAN in Company's name.

5.4. SWIFT® Initiation Method.

SWIFT has established procedures for controlling access to SWIFT messaging services (each, an "Access Control") that may include without limitation access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages including without limitation Files based on SWIFT message type prior to accepting them for routing as SWIFT messages (each, an "Authenticated Message"). This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys ("BKE"), entered into a relationship management application ("RMA") agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time (each, an "Authentication Procedure").

5.5. Security Procedure Elected by Company's Third Party Service Provider.

Company is utilizing a Third Party Service Provider ("TPSP") as defined in the ACH Rules to originate Entries and Files on Company's behalf. Bank will authenticate each File transmitted to Bank in Company's name in accordance with the security procedure the Company's TPSP has elected. Company will notify Bank of any change to Company's TPSP in a manner affording Bank a reasonable opportunity to act on the information.

5.6. Non-Standard Security Procedure.

If Company has refused to utilize any of the security procedures described above, then the Security Procedure Company will use is described on Attachment B to the Acceptance.

- 6. Company's Payment Obligations.** As of the applicable settlement date, Company will maintain available funds in each Account sufficient to cover the credit Entries originated against it. Company's obligation to pay Bank for each credit Entry matures when Bank transmits the credit Entry to the ACH or gateway operator or posts an on-us Entry. Bank is authorized to debit the Account for the total amount of all credit Entries originated from it at any time. If requested by Bank, Company will pay to Bank, in immediately available funds, an amount equal to all credit Entries Company originates through Bank before the date Bank delivers the credit Entries to the ACH or gateway operator or posts an on-us Entry. If Company fails to comply with Bank's request, Bank may refuse to send the Entries to the ACH or gateway operator or post an on-us Entry. Bank may take such other actions as it deems necessary or appropriate to ensure Bank receives payment for Company's credit Entries including without limitation (a) upon notice to Company, placing a hold on funds in any account at Bank or any affiliate of Bank that Company owns in whole or in part sufficient to cover Company's credit Entries and (b) setting off against any amount Bank or an affiliate of Bank owes Company. In addition, Bank may charge the Account or any other Company account at Bank or any affiliate of Bank for any debit, correcting or reversing Entry which is later returned to Bank.
- 7. Provisional Credit.** A credit to Company's Account for an Entry is provisional until Bank receives final settlement for the Entry. If Bank does not receive final settlement, Bank is entitled to debit Company's Account or any other accounts Company owns in whole or in part at Bank or any affiliate of Bank for the amount of the Entry. Company will pay any shortfall remaining after such debit to Bank immediately upon demand.
- 8. Rejected Entries.** Bank may reject an Entry or File if Company fails to comply with the terms of this Service Description. Bank will attempt to notify Company promptly so Company may cure the defect but will have no liability to Company for rejecting an Entry or File or any loss resulting from Bank's failure to provide notice. If Company requests Bank repair an Entry or File and Bank attempts to do so, Bank will not be liable if it is unable to make the requested repair. Company will pay all charges and expenses Bank incurs in connection with any repair or attempted repair.
- 9. Cancellation, Amendment, Reversal.** Company has no right to cancel, amend or reverse an Entry or File after its receipt by Bank. If Company requests Bank cancel, amend or reverse an Entry or File, Bank may, at its sole discretion, attempt to honor such request ~~but will have no liability for its failure to do so. Company will reimburse Bank for any expenses, losses or damages Bank incurs in effecting or attempting to effect Company's request.~~ *MA*
- 10. Returned Entries.** Bank will have no obligation to re-transmit a returned Entry or File to the ACH or gateway operator, or to take any further action with respect to a returned on-us Entry, if Bank complied with the terms of this Service Description with respect to the original Entry or

File. Company will reimburse Bank for any returned debit Entries on the same day Company receives notice of such returned Entry.

11. **Reconstruction of Entries and Files.** Company will retain sufficient records to permit it to reconstruct each Entry and File it delivers to Bank for a period of five (5) Business Days after the applicable settlement date and will submit the reconstructed Entry or File to Bank upon request.
12. **Audit.** Company grants Bank ongoing access to Company's Files and the right to audit periodically such Files and Company's ACH processes and controls so Bank can verify Company's compliance with this Service Description.
13. **Bank's Internal Risk Parameters.** Bank establishes internal risk parameters to identify out-of-pattern or suspect Entries or Files and protect Company and Bank from potential losses. These parameters may include without limitation limits on debit and credit settlements on a single Business Day and/or over multiple consecutive Business Days. Bank may pend or delete an Entry or File exceeding the applicable parameters. In addition, any transaction TYPE (debit or credit) or SEC (standard entry class) as defined in the ACH Rules may, at Bank's option, be conditioned upon Bank's prior approval. Upon notice to Company, Bank may discontinue processing a TYPE and/or SEC of transactions Bank has previously processed for Company.
14. **International Entries.**
 - 14.1. **General.** This section contains additional terms applicable when the financial institution holding the account designated to receive an Entry is in a jurisdiction ("Receiving Country") other than the United States (each, an "International Entry"). Bank will process each International Entry in accordance with (a) the laws and payment system rules of the Receiving Country (b) any agreement governing International Entries between Bank and the gateway operator through which Bank processes the International Entry, the terms of which Bank communicates to Company prior to Company's use of the Service or from time to time thereafter, and (c) the ACH Rules. If there is a conflict among these three clauses, they will govern in the order set forth in this subsection.
 - 14.2. **Credit Entries.** With respect to credit Entries Bank agrees to originate in the currency of a designated foreign government or intergovernmental organization ("Foreign Currency"), Bank will convert the amount to be transferred from U.S. dollars ("USD") to the Foreign Currency at Bank's sell rate for exchange in effect on the Business Day the Entry is transmitted by Bank to the ACH or gateway operator. If the financial institution designated to receive the funds does not pay the Receiver specified in the Entry, or if the Entry is subsequently determined to be erroneous, Bank will not be liable for a sum in excess of the amount of the original Entry after it has been converted from the Foreign Currency to USD at Bank's buy rate for exchange at the time the Entry is returned to Bank.
 - 14.3. **Debit Entries.** With respect to debit Entries Bank agrees to originate in a Foreign Currency, Bank will convert the amount of each Entry from the Foreign Currency to U.S. Dollars at Bank's buy rate for exchange in effect on the settlement date of the Entry. If the financial institution designated to receive the Entry subsequently returns it, Bank may charge the applicable Account (or any other accounts Company owns in whole or in part at Bank or any affiliate of Bank) for the amount equal to the value of the returned Entry, after Bank has converted the Foreign Currency to USD at Bank's sell rate for exchange at the time the Entry is returned to Bank. Bank will not be liable for a sum in excess of the original amount of the Entry after conversion.

- 14.4. Acts or Omissions of Third Parties.** Bank will not be liable for any failure or delay by a gateway operator, any intermediary financial institution, or the financial institution designated to receive the Entry in the Receiving Country in processing or failing to process any Entry Bank transmits to the Receiving Country, or for acts or omissions by a third party including without limitation the delay or failure of any third party to process, credit or debit any Entry.
- 15. Third-Party Sender Activities.** This section contains additional terms applicable when Company is a Third-Party Sender, as defined by the ACH Rules.
- 15.1. General.** Prior to originating any Entry on behalf of a customer of Company, Company will (a) notify Bank in writing of any other financial institution Company is using to originate transactions as a Third-Party Sender and thereafter notify Bank before Company adds any new financial institution for this purpose; (b) provide Bank with the information Bank requires to enable it to understand the nature of Company's customer's business including without limitation the name, Taxpayer Identification Number, business activity and geographic location of Company's customer; (c) if specifically required by Bank, obtain Bank's written approval to initiate or continue to initiate Entries for that customer, which approval Bank may rescind upon written notice to Company; and (d) enter into a written agreement with that customer whereby that customer agrees:
- 15.1.1.** to assume the responsibilities of an originator under the ACH Rules and to be bound by the ACH Rules as in effect from time to time;
 - 15.1.2.** ACH entries may not be initiated in violation of the laws or regulations of the United States including without limitation the regulations issued by the Office of Foreign Assets Control;
 - 15.1.3.** to grant Bank ongoing access to audit it and any ACH entry that it has transmitted to Company for transmission to Bank; and
 - 15.1.4.** Bank may at any time refuse to process an ACH entry for that customer.
- 15.2. Representations and Warranties.** Company represents and warrants to Bank Company (a) has conducted due diligence with respect to each customer of Company for which Company is originating transactions through Bank and determined that each such customer is engaged in a legitimate business and that the type, size and frequency of transactions that each such customer is originating is normal and expected for the customer's type of business; and (b) will, in accordance with reasonable commercial standards, monitor each customer's business and transactions on an ongoing basis and notify Bank promptly if Company identifies any unusual activity by Company's customer.
- 16. Perfect NOC Service.** This section contains additional terms applicable to Bank's Perfect NOC Service. Bank maintains a database of Notifications of Change (each, a "NOC") that Bank receives and uses this database to update Company's Entries in accordance with the Service options Company selects from time to time. Bank will notify Company of each NOC Bank receives in connection with Company's Entries.
- 17. Smart Decision Service.** This section contains additional terms applicable to Bank's Smart Decision Service. Bank will process for credit to the Account specified by Company checks and other instruments payable to Company (each, an "Item") that Company delivers to Bank. Company will use the depository channels through which Bank offers the Service including electronic channels and other channels specified by Bank through which Bank accepts Items for

processing. When Company uses electronic depository channels, Company transmits an "Electronic File" to Bank that includes electronic images of Items (each, an "Electronic Image") and other information regarding Items in the Electronic File. Each Business Day, Bank processes Company's Electronic File and other Items according to the processing criteria Bank has on file for Company, the issuer of an Electronic Image or Item, and Bank (each, respectively, a "Company Preference," an "Issuer Preference," or a "Bank Preference.") Based on these Preferences, Bank will (a) convert each eligible Electronic Image and Item to an ACH debit Entry on the deposit account on which it was drawn; (b) process remaining Electronic Images in accordance with Bank's separate Service Documentation governing the electronic depository channel Company used to deliver the Electronic Image to Bank; or (c) process remaining Items in accordance with Bank's Commercial Account Agreement. If a Company Preference or an Issuer Preference conflicts with a Bank Preference, Bank will follow the Bank Preference.

18. Warranties.

18.1. General. Company acknowledges Bank makes certain warranties under the ACH Rules with respect to each Entry. Company will reimburse Bank for any loss Bank incurs, including Bank's reasonable attorneys' fees and legal expenses, as the result of a breach of a warranty made by Bank in connection with any Entry Bank originates upon the instructions received from Company, except to the extent that the loss resulted from Bank's own gross negligence or intentional misconduct.

18.2. Smart Decision Service. If Company subscribes to Bank's Smart Decision Service, Company warrants Company (a) will transmit to Bank only Electronic Images that are suitable for processing, including, but not limited to, Electronic Images that are legible and contain machine-readable MICR data; (b) will not deposit to the Account or otherwise negotiate any original Paper Item from which Company has previously created and submitted to Bank an Electronic Image, unless Bank has notified Company the Electronic Image is not legible or contains MICR data that is not machine readable; and (c) has received copies of the then-current ACH Rules and Reg E and will comply with both at all times Bank provides the Service.

~~**19. Indemnification.** Company acknowledges Bank indemnifies certain persons under the ACH Rules. Company agrees to reimburse Bank for any loss Bank incurs, including its reasonable attorneys' fees and legal expenses, as the result of the enforcement of any such indemnity, except to the extent the loss resulted solely from Bank's own gross negligence or intentional misconduct. In addition, Company will indemnify Bank from and against all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered by Bank arising directly or indirectly from or related to any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description.~~

20. Termination. In addition to the termination provisions contained in the Master Agreement, Bank may terminate the Services immediately upon notice to Company if Bank determines in its sole discretion: (a) the number of returned debit Entries originated under this Service Description is excessive; or (b) Company has breached a warranty provided under the ACH Rules or this Service Description or otherwise failed to comply with the ACH Rules.

21. Survival. Sections 3, 4, and 6-~~18~~ will survive termination of the Services.



Commercial Account Agreement

Effective ~~March 1, 2013~~

May 1, 2014

ms
[Signature]

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I. Terms Applicable to All Commercial Deposit Accounts

Introduction

In this Commercial Account Agreement ("Agreement"), "Company" refers to the owner or accountholder of a Wells Fargo bank commercial deposit account ("Account"). "Bank" refers to the Wells Fargo bank at which Company's Account is maintained. This Agreement includes the following disclosures applicable to Bank's commercial deposit accounts and related services (each, a "Service"), that Bank has separately provided to Company: (i) the schedule of Bank's fees and other account-related information (the "fee and information schedule"), (ii) the collection schedule, (iii) the funds availability policy, (iv) the privacy policy, ~~(v) the rate sheets for interest bearing accounts, each as modified by Bank from time to time, and (vi) any additional disclosures regarding Company's Account that Bank may provide to Company.~~ *MS* Company is responsible for ensuring that each Authorized Signer is familiar with this Agreement. Unless Company has instructed Bank in writing to the contrary, Bank may consider communications about Company's Account from an Authorized Signer on ~~Bank's Account as communications from Company. Company agrees to notify Bank immediately in writing if any Authorized Signer's authority has been terminated. This Agreement replaces all prior agreements with Bank regarding Company's Account other than agreements regarding security interests in, or services utilizing the Account. By signing Bank's signature card for Company's Account or by using Company's Account or a Service, Company will be deemed to have agreed to this Agreement. Company should retain a copy of this Agreement (and any information that Bank provides Company regarding changes to this Agreement) for as long as Company maintains its Account with Bank.~~ *MS*

Defined Terms

In this Agreement, certain words have a special meaning and are therefore defined. Certain terms and their definitions are found in this Section, and others are found in the text of this Agreement.

Affiliate.

An "Affiliate" is a bank that is, directly or indirectly, a wholly or substantially owned subsidiary of Wells Fargo & Company.

Authorized Signer.

An "Authorized Signer" is a person who has Company's actual or apparent authority to transact business on Company's Account(s), whether or not such person has signed the signature card or other documentation for

Company's Account(s). Bank may continue to recognize an Authorized Signer's authority until Bank has received and had a reasonable time to act upon Company's written modification or revocation of it.

Business Day.

A "Business Day" is every day except Saturdays, Sundays and federal holidays.

Collected Balance.

The "Collected Balance" is the Ledger Balance in Company's Account less Deposit Float.

Commercial Deposit Account.

A "Commercial Deposit Account" is any deposit account, other than one of Bank's business deposit accounts, that is not held or maintained primarily for personal, family or household purposes. Examples of commercial deposit accounts include an account owned by an individual acting as a sole proprietor, a partnership, a limited partnership, a limited liability partnership, a limited liability company, a corporation, a joint venture, a non-profit corporation, an employee benefit plan or a governmental unit including an Indian tribal entity.

Deposit Float.

"Deposit Float" is the total dollar amount of Items deposited in Company's Account for which, based on the collection schedule used by Bank or the applicable Affiliate for this type of account, Company's Account has not yet been credited for purposes of calculating the Collected Balance.

Deposited Item.

A "Deposited Item" is an Item (including a non-U.S. Item) that Bank cashes or collects for Company or accepts for deposit to Company's Account.

Investable Balance.

The "Investable Balance" is the Collected Balance in Company's Account less (i) the portion of such Collected Balance that Bank is required by law to hold in reserve at a Federal Reserve Bank and (ii) other adjustments.

Item.

An "Item" includes a check, substitute check, purported substitute check, electronic item, draft, demand draft, preauthorized draft, remotely created check, remotely created item, remotely created consumer item, image replacement document or other order or instruction for the payment, transfer, or withdrawal of funds (including a withdrawal slip), automatic

transfer, and electronic transaction (including a wire transfer, an ACH transfer and a Consumer ACH Debit Entry), any written document created or authorized in Company's name that would be a check or draft but for the fact that it has not been signed, and a cash-in ticket or a deposit adjustment or a photocopy or an image of any of the foregoing.

Ledger Balance.

The "Ledger Balance" is the balance in Company's Account after all debits and credits for the Business Day are posted.

Overdraft.

An "Overdraft" is any event that results in a negative balance in Company's Account.

Paper Item.

A "Paper Item" is an Item that is in paper form.

Service.

A "Service" is any service Bank provides to Company including without limitation any Treasury Management Service.

Arbitration Agreement

Agreement to Arbitrate.

Except as stated in "No Waiver of Self-Help or Provisional Remedies" below, Company and Bank agree, at Company's or Bank's request, to submit to binding arbitration all claims, disputes and controversies between or among Company and Bank (and their respective employees, officers, directors, attorneys and other agents), whether in tort, contract or otherwise arising out of or relating in any way to Company's Account(s) and/or Service(s) and their negotiation, execution, administration, modification, substitution, formation, inducement, enforcement, default or termination (each, a "Dispute").

Governing Rules.

Any arbitration proceeding will (i) proceed in a location selected by the American Arbitration Association ("AAA") in the state whose laws govern Company's Account; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between Company and Bank; and (iii) be conducted by the AAA, or such other administrator as Company and Bank shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least

~~\$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and any such Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. Nothing contained herein shall be deemed to be a waiver by Bank of the protections afforded to it under 12 U.S.C. Section 91 of any similar applicable state law.~~

~~**No Waiver of Self-Help or Provisional Remedies.**~~

~~This arbitration requirement does not limit the right of either party to (i) exercise self-help remedies including setoff or (ii) obtain provisional or ancillary remedies such as injunctive relief or attachment, before, during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of either party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in (i) and (ii) of this subsection.~~

~~**Arbitrator Qualifications and Powers.**~~

~~Any Dispute in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Each arbitrator will be a neutral attorney licensed in the state whose laws govern Company's Account and who has a minimum of ten (10) years experience in the substantive law applicable to the subject matter of the Dispute to be arbitrated. The arbitrator(s) will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator(s) will decide (by documents only or with a hearing at the discretion of the arbitrator(s)) any pre-hearing motions which are similar to motions to dismiss or failure to state a claim or motions for summary adjudication. The arbitrator(s) shall resolve all Disputes in accordance with the substantive law of the state whose laws govern Company's Account and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to~~

~~make effective any award. The arbitrator(s) shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as deemed necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the state rules of civil procedure for the state whose laws govern Company's Account or other applicable law. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.~~

Discovery.

~~In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than twenty (20) days before the hearing date and within 180 days of the filing of the Dispute with the AAA. Any requests for an extension of the discovery periods, or any discovery Disputes, will be subject to final determination by the arbitrator(s) upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.~~

Class Actions and Consolidations.

~~Company and Bank agree that the resolution of any Dispute arising pursuant to the terms of this Agreement shall be resolved by a separate arbitration proceeding and shall not be consolidated with other Disputes or treated as a class. Neither Company nor Bank shall be entitled to join or consolidate Disputes by or against others in any arbitration, or to include in any arbitration any Dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.~~

Payment of Arbitration Costs and Fees.

~~The arbitrator(s) shall award all costs and expenses of the arbitration proceeding.~~

Miscellaneous.

~~To the maximum extent practicable, the AAA, the arbitrator(s), Company and Bank shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. The arbitrator(s) Company or Bank may not disclose the existence, content or~~

~~results thereof, except for disclosures of information by Company or Bank required in the ordinary course of business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. If more than one agreement for arbitration by or between Company and Bank potentially applies to a Dispute, the arbitration agreement most directly related to Company's Account or the subject matter of the Dispute shall control. This arbitration agreement shall survive the closing of Company's Account or termination of any Service or the relationship between Company and Bank.~~

Statements and Other Account-Related Information

Mailing Statements and Other Account-Related Information to Company.

Except as expressly provided otherwise in this Agreement, Bank will mail (or otherwise make available to Company) statements for Company's Account and notices and other information regarding Company's Account or any Service (collectively, "Account-Related Information") to the postal ~~Contract electronic address reflected in Bank's records for Company's Account. Any statement or Account-Related Information will be deemed to have been sent to Company on the first Business Day following the date on it. A statement or other Account-Related Information that is held for Company to pick up will be deemed to be delivered to Company at the time that Bank makes it available for pick up.~~

Company's Obligation to Review Statements and Other Account-Related Information and to Notify Bank of Errors.

Company agrees to promptly and carefully examine each statement for Company's Account and any other Account-Related Information and any paid items that are returned with (or described in) the statement and any other Account-Related Information and to promptly notify Bank of, and reimburse Bank for, any erroneous credit to Company's Account. Within thirty (30) days after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund due, for example, to an erroneous or unauthorized debit, a missing signature, an unauthorized signature, or an alteration (each, an "unauthorized transaction"). ~~Within six (6) months after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund resulting from a forged, unauthorized, or missing endorsement. Such notification is to be made by (i) calling the telephone number listed on the statement for Company's Account or in the other Account-Related Information for such purpose and (ii) submitting a written report to Bank as soon as possible, but, in any event, within the~~

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specified above. If Company fails to notify Bank within the timeframes specified above, the balance shown on the statement for Company's Account or other Account-Related Information will be conclusively presumed to be correct, and Company will be deemed to have released Bank from all liability for the Items charged to Company's Account and for all other transactions covered by the statement or other Account-Related Information. In addition, if Company fails to notify Bank of an unauthorized transaction on Company's Account within thirty (30) days after Bank mails or otherwise makes the statement for Company's Account or other Account-Related Information describing the unauthorized transaction available to Company, Bank will not be liable to Company for any unauthorized transactions on Company's Account by the same person that could have been prevented if Company had complied with Company's obligations under this subsection. If Company notifies Bank of any claim for credit or refund later than required by this subsection, Bank may assert, at Company's request and on Company's behalf, any claim against a third party that Bank determines in Bank's sole discretion is permitted under the laws governing this Agreement or applicable rule.

Returned, Unclaimed Statements or Other Account-Related Information.

Unless otherwise prohibited by the laws governing this Agreement, (i) if two or more statements for Company's Account are returned, Bank may discontinue sending statements for Company's Account and other Account-Related Information to Company until Company provides a valid address to Bank; (ii) Bank may destroy statements for Company's Account and other Account-Related Information that are sent to Company and returned to Bank as undeliverable; and (iii) if Bank holds the statement for Company's Account or other Account-Related Information for Company to pick up and the statement remains unclaimed for sixty (60) days, Bank may send the statement to the address reflected in Bank's records for Company's Account or destroy it.

Address Changes for Statements for Company's Account and Other Account-Related Information.

Company may instruct Bank to change the address to which Bank mails (or the means by which Bank otherwise makes available) statements for Company's Account and other Account-Related Information at any time. Bank may act on any such instruction purportedly made on Company's behalf within a reasonable time after Bank receives such instruction. Unless Company instructs Bank otherwise, Bank may in its sole discretion change the address only for the Account(s) Company specifies or for all or some of Company's other Accounts with Bank. Bank may change Company's

address of record if Bank receives an address change notice from the U.S. Postal Service or if Bank receives information from a third party in the business of providing correct address information that the address in Bank's records no longer corresponds to Company's address.

Notices and Other Mail.

Any notice Company sends Bank will not be effective until Bank actually receives it and has a reasonable opportunity to act on it. If there is more than one Authorized Signer on Company's Account, Bank may send statements and other Account-Related Information to any one of them (unless Company has otherwise instructed Bank in writing). Company assumes the risk of loss in the mail. Any notice Bank sends Company will be effective when mailed or otherwise made available to Company.

Contacting Company Regarding Servicing and/or Collections.

In order for Bank to service the Account or to collect any amounts Company owes to Bank, Bank may from time to time make calls and/or send text messages to Company at any telephone number(s) associated with Company's Account, including wireless telephone numbers that could result in charges to Company. The manner in which these calls or text messages are made to Company may include without limitation prerecorded/artificial voice messages and/or an automatic telephone dialing system. In addition, in order for Bank to service the Account or to collect any amounts Company owes to Bank, Bank may send e-mails to Company at any e-mail address Company provides to Bank.

Electronic Communications.

If Company provides Bank with an electronic address to which Bank may send electronic communications, Company agrees that Bank may send to Company by electronic communication any information that the laws governing this Agreement require be sent to Company in writing, provided such electronic communication does not violate the laws governing this Agreement. "Electronic communication" means a message transmitted electronically in a format that allows visual text or images to be displayed on equipment such as a personal computer monitor.

Fraud Prevention

Protection Against Unauthorized Items.

Company acknowledges that there is a growing risk of losses resulting from unauthorized Items. Bank offers Services that provide effective means for controlling the risk from unauthorized Items. These Services include:

- Positive Pay, Positive Pay with Payee Validation, or Reverse Positive Pay (each offered by Bank in conjunction with Bank's Account Reconciliation Plan Service);

- ACH Fraud Filter; and

- Payment Authorization Service.

In addition, Bank may recommend Company use certain fraud prevention practices to reduce Company's exposure to online fraud. Each of these practices is an industry "best practice".

An example of a best practice is dual custody, which requires a payment or user modification initiated by one user to be approved by a second user on a different computer or mobile device before it takes effect.

Company will be treated as having assumed the risk of any loss that could have been prevented by its use of any fraud prevention Service or best practice Bank has recommended to Company, if Company:

- Declines to enroll in the fraud prevention Service(s);
- Enrolls in the fraud prevention Service but fails to use it in accordance with the Service Documentation applicable to it; or
- Fails to adopt and follow a best practice.

Lost or Stolen Paper Items; Unauthorized Items.

If any of Company's unissued Paper Items has been lost or stolen, or if Company learns that unauthorized Items are being issued on Company's Account, Company agrees to notify Bank at once. To the extent that Company's failure to so notify Bank hampers Bank's ability to prevent loss, Bank will be relieved of any liability for such Items. Upon receipt of any such notice, Bank may at its sole discretion and without any liability to Company take one or more of the following actions: (i) close Company's Account and open a new account for Company; (ii) dishonor any Paper Item Company or an Authorized Signer has indicated may have been lost or stolen (unless Company or an Authorized Signer subsequently has instructed Bank to honor such an Item); or (iii) pay any Paper Item presented for payment on Company's Account, provided Company has instructed Bank to pay such Paper Item and given Bank the number of that Paper Item. If Bank opens a new account for Company and Company has authorized a third party to automatically make regular deposits to or withdrawals from Company's Account (such as wire or ACH transfers), Bank shall have no liability to Company if Company does not receive any

regularly scheduled deposit or if a regularly scheduled payment is not made for Company due to Company's failure to notify that third party in a timely fashion of the number of Company's new Account.

Preventing Misuse of Company's Account.

Company agrees to take reasonable steps to ensure the integrity of Company's internal procedures with respect to Company's Account and Items drawn on Company's Account or deposited to it. To help prevent embezzlement and protect Company's business assets, Bank recommends Company:

- Assign responsibilities for Company's Account to multiple individuals. Those who reconcile statements for Company's Account should be different from those who issue Items drawn on Company's Account.
- Reconcile statements for Company's Account as received and notify Bank immediately of any problem.
- Contact Bank immediately if Company does not receive the statement for Company's Account when Company would normally expect to.
- Watch for Paper Items cashed out of sequence or made out to cash. These are classic red flags for embezzlement.
- Secure Company's supply of Paper Items at all times. Stolen Paper Items are a common method of embezzlement.
- Periodically reassign accounting duties such as reconciling Company's Account or making a deposit.
- Review transaction activity on Company's Account for unexpected fluctuations. For example, compare the percentage of cash deposits to total deposit size. Most businesses will maintain a constant average. A large fluctuation might indicate embezzlement.
- Destroy any Paper Item that Company does not intend to use.
- Use tamper-resistant Paper Items at all times.
- Notify Bank immediately when an Authorized Signer's authority ends so that his/her name can be removed from all signature cards and Online Banking access, and any Cards that Bank has issued to him/her can be cancelled.
- Do not sign blank Paper Items.
- Obtain insurance coverage for these risks.

Claim of Unauthorized Transactions; Bank's Rights and Liability

Investigation by Bank; Company's Agreement to Cooperate.

Bank shall investigate any transaction Company has reported to Bank as unauthorized (a "Claim of Unauthorized Transaction"). Company agrees to (i) submit Company's Claim of Unauthorized Transaction in writing to Bank by completing or obtaining a declaration under penalty of perjury describing Company's Claim of Unauthorized Transaction (in an affidavit form approved by Bank, if so requested); (ii) file a police report; (iii) complete and return to Bank any documents requested by Company; and (iv) in all respects cooperate fully with Bank in Bank's investigation of Company's Claim of Unauthorized Transaction.

Standard of Care.

Bank will meet its standard of care for Company's Account by exercising ordinary care in the transaction at issue. When Bank takes an Item for processing by automated means, "ordinary care" does not require Bank to examine the Item. In all other cases, "ordinary care" requires only that Bank follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Bank's policies and procedures are general internal guidelines for Bank's use and do not establish a higher standard of care for Bank than is otherwise established by the laws governing this Agreement. A mere clerical error or an honest mistake will not be considered a failure of Bank to perform any of its obligations. If Bank waives any of its rights as to Company or Company's Account on one or more occasions, it will not be considered a waiver of Bank's rights on any other occasion.

Limitation of Liability; Indemnification.

Whether in connection with Company's Account or a Service, in no event will either party to this Agreement or its respective directors, officers, employees, or agents be liable to the other party for any special, consequential, indirect or punitive damages, whether any claim is based on contract or tort or whether the likelihood of such damages was known to either party. The foregoing limitation of liability will not apply where expressly prohibited by the laws governing this Agreement. Bank will not have any liability to Company if there are insufficient available funds in Company's Account to pay Company's Items due to actions taken by (i) Bank in accordance with this Agreement or (ii) any third party. Except to the extent that Bank fails to exercise ordinary care or breaches this Agreement, Company agrees to indemnify and hold Bank and its directors, officers, employees and agents harmless from all claims, demands, losses, liabilities,

judgments and expenses (including their attorneys' fees and legal expenses) arising out of or in any way connected with Bank's performance under this Agreement. Company agrees this indemnification will survive the closing of Company's Account and the termination of any Service.

Adverse Claims.

If any person or entity makes a claim against funds in Company's Account, or if Bank believes that a conflict exists between or among the Authorized Signers on Company's Account or that there is a dispute over matters such as the ownership of Company's Account or the authority to withdraw funds from Company's Account, Bank may, without any liability to Company, take one or more of the following actions: (i) continue to rely on Bank's records to determine the ownership of or the identity of the Authorized Signer(s) for Company's Account; (ii) honor the claim upon receipt of evidence satisfactory to Bank to justify such claim; (iii) freeze all or a part of the funds in Company's Account until the dispute is resolved to Bank's satisfaction; (iv) close Company's Account and send a check for the available balance in Company's Account payable to Company or to Company and each claimant; or (v) pay the funds into an appropriate court.

Legal Process.

Bank may accept and act on any legal process it believes is valid, whether served in person, by mail or by electronic notification, at any location of Bank. "Legal process" includes a levy, garnishment or attachment, tax levy or withholding order, injunction, restraining order, subpoena, search warrant, government agency request for information, forfeiture, seizure or other legal process relating to Company's Account. Any such legal process is subject to Bank's security interest and right of setoff. Bank will not notify Company of a grand jury subpoena affecting Company or Company's Account.

"Freezing" Company's Account.

As part of Bank's loss prevention program, when Bank suspects that irregular, unauthorized, or unlawful activities may be occurring in connection with Company's Account, Bank may "freeze" (or place a hold on) the balance in Company's Account (and in other Account(s) Company maintains with Bank) pending an investigation of such suspected activities. If Bank freezes Company's Account, Bank will give any notice required by the laws governing this Agreement.

Force Majeure.

Neither party to this Agreement shall be deemed to be in default of any of its obligations under this Agreement if its performance is delayed, hindered

or becomes impossible because of any act of God or of any public enemy, hostilities, war (declared or undeclared), guerrilla or terrorist activities, act of sabotage, blockade, earthquake, flood, landslide, avalanche, tremor, ground movement, hurricane, storm, explosion, fire, labor disturbance, riot, insurrection, strike, sickness, accident, civil commotion, epidemic, act of government or its agencies or officers, power interruption or transmission failure or any cause beyond the control of either party.

Company's Insurance Coverage.

Many businesses carry special insurance for employee fraud/embezzlement. If Company does, Bank reserves the right to require Company to file a claim with its insurance company before making any claim against Bank. In such event, Bank will consider Company's claim only after Bank has reviewed Company's insurance company's decision, and Bank's liability to Company, if any, will be reduced by the amount Company's insurance company pays Company.

Substitute Checks

A federal law, known as the "Check Clearing for the 21st Century Act" or "Check 21," took effect on October 28, 2004. This law provides for an instrument called a "substitute check." A substitute check contains an accurate copy of the front and back of the original draft and bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check." As noted in the legend, a substitute check is the same as the original draft for all purposes, including proving that Company made a payment. Any Paper Item Company issues or deposits that is returned to Company may be returned in the form of a substitute check. ~~Even if Company has cancelled items returned with the statements for Company's Account, Bank may in its sole discretion withhold substitute checks therefrom. Company agrees Company will not transfer a substitute check to Bank by deposit or otherwise, if Bank would be the first financial institution to take the substitute check, unless Bank has expressly agreed in writing to take it.~~

Deposits to Company's Account

General.

Unless otherwise agreed in writing, Bank may, without inquiry, accept a deposit to Company's Account at any time, from any person or entity, made in any manner including without limitation a deposit based on an image of an Item. Bank may also refuse to accept all or any part of any deposit. Bank may use time and place of receipt, method of delivery, and status of set up to determine when Company's deposit is received. Bank may require that Company deposit an Item made payable to Company to Company's Account, instead of permitting Company to cash the Item. Bank is not

responsible for a deposit until a Bank employee has received and verified it. The receipt received at the time of deposit is not evidence a deposit has been verified. Bank may reverse or otherwise adjust any credit Bank believes it has erroneously made to Company's Account at any time without prior notice to Company.

Collection Items.

Bank may, in its sole discretion and with notice to Company, handle a Paper Item as a collection Item, instead of as a deposit. This means Bank sends the Item to the issuer's bank for payment and credits Company's Account for the Item when Bank receives payment for the Item. If the Item is returned unpaid, Bank will return the Item to Company.

Endorsements.

This subsection applies if an endorsement is necessary for the transfer or negotiation of an Item. Company authorizes Bank to supply Company's endorsement on any Item Bank takes for collection, payment or deposit to Company's Account. Company also authorizes Bank to collect any unendorsed Item that is made payable to Company without first supplying Company's endorsement, provided the Item was deposited to Company's Account. Bank may refuse to pay any Item or accept any Item for deposit or collection unless Bank is able to verify to its satisfaction that all of the necessary endorsements are present on the Item. For example, Bank may require that all endorsers be present at the time that an Item is presented to Bank for payment or accepted for deposit or collection.

Material Appearing on the Back of Paper Items; Legends on Paper Items.

Company is responsible for losses incurred by any person that cashes or accepts Company's Paper Items for deposit, if: (i) the loss is due to a delay in the return of the Item; and (ii) the delay is caused by material appearing on the back of the Item when it was issued or transferred by Company. This material may include, but is not limited to, carbon bands, blacked out areas, and printed or written text or numbers. Company is responsible for all losses, claims, damages or expenses that result from a restrictive legend or notation on Company's Paper Items.

Breach of Warranties.

If Company breaches any warranty Company makes under the laws governing this Agreement or rule with respect to any Item, Company shall not be released or otherwise discharged from any liability for such breach so long as Bank notifies Company of the breach within 120 days after Bank learns of the breach. If Bank fails to notify Company within the 120-day

period, Company shall be released from liability and discharged only to the extent Bank's failure to notify Company within such time period caused a loss to Company.

When Deposits are Credited to Company's Account.

~~All over-the-counter deposits or ATM deposits to Company's Account which are received before Bank's established cut-off time on any Business Day will be credited (and will be considered deposited) to Company's Account as of the close of business that day, and will be reflected in that day's Ledger Balance for Company's Account. All other deposits will be processed in accordance with the written agreements governing such deposits or, if there is no written agreement, banking practice. All deposits received after Bank's established cut-off time on a Business Day or at any time on a day which is not a Business Day will be credited (and will be considered deposited) to Company's Account at the end of the next Business Day. Deposits placed in one of Bank's "night depositories" before the established deadline on any Business Day will be credited to Company's Account at the close of business on that same day. All other deposits placed in the "night depository" will be credited to Company's Account at the end of the next Business Day.~~

Company's Use of Funds.

Company's use of funds deposited to Company's Account will be governed by Bank's separately disclosed collection schedule and, if Company's Account is a checking account, funds availability policy. Bank's collection schedule describes when deposits of Items that satisfy certain criteria will be considered collected. A fee may be charged in connection with any use of uncollected funds permitted by Bank. The then-current rate will appear on the statement for Company's Account. Bank's funds availability policy describes when funds deposited to Company's checking Account will be available to be used for all purposes. ~~Bank may change its collection schedule and funds availability policy from time to time without prior notice to Company.~~

Deposits at Affiliates.

Company may make deposits to Company's Account(s) at an Affiliate, provided the Affiliate agrees. If Company makes a deposit to Company's Account at an Affiliate, that Affiliate's collection schedule and funds availability policy will determine when the funds deposited to Company's Account will be considered collected and available.

Deposits of Non-U.S. Items.

Bank may refuse to accept for deposit or collection an Item that is payable in currency other than U.S. dollars or an Item that is not drawn on a financial

institution chartered in the United States (each, a "non-U.S. Item"). If Bank accepts a non-U.S. Item for deposit to Company's Account or collection, Company accepts all risk associated with foreign currency fluctuation (exchange rate risk) and any late return of the non-U.S. Item. Company agrees Bank may use Bank's current buying and selling rate, as applicable, when processing a non-U.S. Item and may recover from Company's Account any loss Bank incurs as a result of processing such an Item for Company. Bank reserves the right to place longer holds on non-U.S. Items than the timeframes specified in Bank's funds availability policy for Deposited Items.

Acts and Omissions of Other Financial Institutions.

Bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for the loss or destruction of a Deposited Item or of a notice of nonpayment relating thereto. If a Deposited Item is lost or misrouted during the collection process: (i) Bank shall have no responsibility to Company for the actions or inactions of any collecting bank; (ii) Bank may charge Company's Account for the amount of the Deposited Item (and reverse any interest that may have accrued to Company's Account in connection with the Deposited Item); and (iii) Company agrees to cooperate with Bank in recreating the Deposited Item.

Deposited Items Returned.

Bank has the right to charge back to or otherwise debit any of Company's Account(s) for any Deposited Item that is returned (and to reverse or recover any associated interest that may have accrued), even if Company has made withdrawals against it. This right of charge back or debit is not affected by the expiration of any applicable midnight deadline, provided Bank does not have actual knowledge that such deadline has expired or, having such knowledge, (i) Bank concludes that the Deposited Item has been returned in accordance with the laws governing this Agreement or a rule (including a clearing house rule); or (ii) Bank has received a breach of warranty claim in connection with the Deposited Item.

Bank has the right to pursue collection of such Deposited Item, even to the extent of allowing the payor bank to hold the Deposited Item beyond the midnight deadline in an attempt to recover payment. Bank may redeposit a returned Deposited Item and re-present it for payment by any means (including electronic means), unless Bank has received instructions from Company not to redeposit such Deposited Item. Bank will have no liability for taking or failing to take any action to recover payment of a returned Deposited Item.

If one of Company's Deposited Items is returned with a claim that there is a breach of warranty (for example, that it bears a forged endorsement or is altered in any way), Bank may debit Company's Account for the amount of the Item (plus any associated fees) and pay the amount to the person or entity making the claim. Bank is under no duty to question the truth of the facts that are being asserted, to assess the timeliness of the claim, or to assert any defense. Bank need not give Company any prior notification of its actions with respect to the claim. Company agrees to immediately repay any overdraft caused by the return of a Deposited Item.

Direct Deposits Returned by Bank.

If, in connection with a direct deposit plan funds are deposited to Company's Account and later returned to the originator, Bank may deduct the amount from that or any other Account Company maintains at Bank, without prior notice and at any time, except as prohibited by the laws governing this Agreement. Bank may also use any other legal remedy to recover the amount.

Reconstructing Lost or Destroyed Deposited Items.

If a Deposited Item is lost or destroyed during processing or collection (either at Bank or at another point in the payments system), Company agrees to cooperate fully with Bank to reconstruct the Deposited Item by promptly: (i) providing Bank with a copy of the front and back of the Deposited Item from Company's or the issuer's records; (ii) asking the issuer to place a stop payment on it (at Bank's expense) and issue a replacement Item to Company (if the Deposited Item has not been paid); or (iii) reviewing Company's records and other information and conducting any additional research as may be reasonable to determine the issuer's identity (if Company does not know the identity of the issuer of the Deposited Item). If Company fails to cooperate with Bank, Bank may, at any time and without advance notice to Company, reverse or otherwise adjust any credit made to Company's Account for a lost or destroyed Deposited Item.

Withdrawals from Company's Account

Determining Company's Account's Balance; Debiting Company's Account.

In determining the balance in Company's Account that is available to pay Items, Bank may reduce the available balance by the amount of any hold that Bank has placed on Company's Account under this Agreement. Additionally, Bank may place a hold on Company's Account if Bank receives an electronic notice that an Item will be presented for payment or collection against Company's Account (a "Notice of Presentment"). The hold may remain in effect from the time the Notice of Presentment is received until

the Item is presented or notice is received that the Item will not be presented, whichever first occurs. Bank may conclusively rely on the information it receives in an electronic presentment or notification when determining the available balance in Company's Account, and Bank will not have any liability for refusing to honor any of Company's Items because of insufficient funds, even if the electronic presentment or notification incorrectly describes the Item, including its amount. Bank may debit Company's Account on the day an Item is presented by any means, including without limitation electronically, or at an earlier time based on notification received by Bank that an Item drawn on Company's Account will be presented for payment or collection. A determination of the balance in Company's Account for purposes of making a decision to dishonor an Item for insufficiency or unavailability of funds may be made at any time between the presentment of the Item (or earlier upon receipt of any Notice of Presentment) and the time of return of the Item. No more than one such determination need be made.

Order of Posting; Categories of Items

Bank posts transactions during its nightly processing each Business Day. Generally, Bank first posts deposits or incoming transfers received before the deposit cutoff time that day. Bank then posts withdrawals (such as ATM, debit card or check transactions) that have been received for payment from Company's Account. Bank pays some categories (or types) of transactions, such as debit card transactions, before other types of transactions, such as checks.

The order in which Bank posts Items to Company's Account will depend upon a number of factors. For example, in connection with the process of posting Items, Bank has the right to (i) establish different categories of Items, (ii) establish a posting order for each category of Item(s), and (iii) establish different posting orders for Items within each category. Except to the extent limited by federal regulatory and judicial authorities, Bank has the right to change any of the factors described in (i), (ii) and (iii) above at any time without notice to Company.

Establishing categories of Items. Bank groups Items into categories it establishes. For example, Bank may group debit card transactions into one category, and group checks into another category. Bank may include more than one type of Item in a single category.

Establishing a posting order for each category of Items. Bank pays some categories (or types) of transactions, such as debit card transactions, before other types of transactions, such as checks.

Establishing a posting order of Items within a single category. If there are multiple transactions within a category, the order in which the transactions are posted will vary depending on the type of transaction.

For example, Bank will pay the most common types of transactions in the following order:

- ATM, debit card, account transfers, teller cashed checks and teller cash withdrawals - transactions will be sorted by the date the transaction was conducted. For a debit card transaction, if a merchant does not seek pre-authorization from the Bank at the time of the transaction, Bank will use the date the transaction is received for payment from Company's account. If there are multiple transactions on a date, those transactions will be sorted by time (where that information is available to Bank's posting systems); the remaining transactions on that date will be sorted and paid from lowest to highest dollar amount.

- Checks and automatic payments (also known as ACH).

All states except Nevada

If there are multiple transactions, the transactions will be sorted and paid from highest to lowest dollar amount.

Nevada only

If there are multiple transactions, the transactions will be sorted in sequential order if the item has a serial number. Items without a serial number will be paid from highest to lowest dollar amount.

Relation between posting order and overdrafts/returned items

On any given Business Day, if Bank receives more than one Item for payment and determines there are sufficient funds to pay one or more but not all of the Items, then the number of Items paid and the overdraft and returned Item fees assessed could be affected by the order that Bank chooses to post those Items. For example, if Bank posts Items in the order of highest to lowest dollar amount, the total number of overdraft and returned Item fees Company is charged could be larger than if Bank were to post the Items in a different order.

Paper Items Presented Over-the-Counter for Payment by a

Non-Customer

If a Paper Item drawn against Company's Account is presented over-the-counter for payment by a person who does not have a deposit account at Bank, Bank may charge a fee to the person presenting the Paper Item as a condition for payment of the Paper Item. Company should contact its banker if Company has questions or if Company is required for any reason to have a place where Company's Paper Items can be cashed without a fee. The amount of the fee is disclosed in the fee and information schedule. Bank

may require identification acceptable to Bank and not prohibited by the laws governing this Agreement, including a fingerprint of the person presenting the Paper Item. Bank may dishonor the Paper Item if the person refuses to pay this fee or provide the identification Bank requests.

Large Cash Withdrawals.

If Company wants to cash a check (or make a cash withdrawal from Company's Account) for a very large amount, Bank may require five (5) Business Days' advance notice so that it can order the cash from its vault. Bank may, but is not obligated to, require that Company provide adequate security when Company picks up the cash and may also require Company to pick up the cash at Bank's central vault or other location.

Withdrawals at Affiliates.

Company may make withdrawals from Company's Account at an Affiliate, provided the Affiliate agrees. If an Affiliate cashes an Item for Company, Bank may place a hold on Company's Account(s) for a corresponding amount of funds. If the Item is later returned to the Affiliate for any reason, Bank may debit one or more of Company's Accounts for the amount of the Item.

Items Resulting From Company's Disclosure of Company's Account Number.

If Company voluntarily discloses Company's Account number to another person orally, electronically, in writing, or by some other means, and Bank determines that the context of such disclosure implies Company's authorization to debit Company's Account, Bank may treat such disclosure as Company's authorization to that person to issue Items drawn on Company's Account.

Missing Signatures; Alterations; Forgeries.

Bank will have no responsibility for reviewing the number or combination of signatures on an Item drawn on Company's Account. This means that if Company has indicated that more than one signature is required in connection with an Item drawn on Company's Account,

Bank will have no liability to Company if a transaction is conducted on or through Company's Account contrary to the signature requirements Company has specified, provided at least one of the required signatures appears on the Item. Bank will have no liability to Company for failing to detect a forgery of the signature of an Authorized Signer or an alteration of one of Company's Items, if the forgery or alteration is such that a reasonable person could not reasonably be expected to detect it.

Dates and Special Instructions on Paper Items.

Bank may, without inquiry or liability, pay one of Company's Paper Items even though: (i) special instructions written on the Paper Item indicate that Bank should refuse payment (e.g., "Void after thirty (30) days," "Paid-In-Full," or "Void over \$100"); ~~(ii) the Paper Item is stale dated (e.g., it bears a date that is more than six (6) months in the past), even if Bank has knowledge of the date on the Paper Item;~~ (iii) the Paper Item is post-dated (e.g., it bears a date in the future), unless an Authorized Signer has given Bank a notice of post-dating; or (iv) the Paper Item is not dated. In addition, Bank may pay in U.S. dollars the amount that has been MICR-encoded on Company's Paper Item, even though Company has purportedly drawn the Paper Item in a foreign currency.

Facsimile or Mechanical Signatures.

If Company has elected to use a facsimile, other mechanical signature (including a stamp) to sign or endorse Paper Items or a Company logo or other mark in lieu of a signature, Bank may rely on that signature (or any signature that purports to be the facsimile, other mechanical signature of an Authorized Signer) or the Company logo or other mark as Company's authorized signature without regard to when or by whom or by what means or in what ink color such signature, Company logo or other mark may have been made or affixed to a Paper Item deposited to, drawn on or otherwise debited to Company's Account.

Consumer ACH Debit Entries.

Under the ACH Operating Rules, certain types of ACH entries may only be presented on a consumer account. These entries (each, a "Consumer ACH Debit Entry") include without limitation Point of Purchase ("POP"), account receivable ("ARC"), destroyed check ("XCK") and returned check ("RCK") entries. Bank shall have no obligation to pay, and no liability for paying, any Consumer ACH Debit Entry on Company's Account.

Stop Payment Orders; Notices of Post-Dating

General.

"Stop payment order" refers to both an order to Bank not to pay a Paper Item and to a notice of post-dating. To be effective, a stop payment order must be received in a time and manner that gives Bank a reasonable opportunity to act on it before paying, accepting, certifying, cashing or otherwise becoming obligated to pay Company's Paper Item as provided in the Uniform Commercial Code. Each stop payment order is subject to Bank's verification that the Paper Item described in the order has not been

paid. This verification may occur subsequent to the time Bank accepts the stop payment order.

Content of Stop Payment Order.

Bank requires the exact (i) name of the payee, (ii) number of Company's Account on which Paper Item is drawn, (iii) Paper Item amount and (iv) the Paper Item number or a range of Paper Item numbers. Bank may, at its sole discretion, use only a portion of the required information in order to identify a Paper Item. Failure to provide correct and complete information may make it impossible for Bank to stop payment of a Paper Item. ~~Company agrees to indemnify and hold Bank harmless from and against any loss incurred by Bank as a result of Bank's paying a Paper Item if any of the information relied upon in the stop payment order is incorrect or incomplete (or as a result of Bank's not paying a Paper Item for which a valid stop payment order is in effect).~~

Effective Period of Stop Payment Order; Renewal; Revocation.

Bank need not honor a written stop payment order for more than six (6) months. For accounts that do not have Bank's STOP AUTO-RENEWAL Service, Company must renew a stop payment order if Company does not want the stop payment order to expire after six (6) months. Each renewal is treated as a new stop payment order. For accounts with Bank's STOP AUTO-RENEWAL Service, a stop payment order is subject to annual renewals for up to six (6) twelve-month periods, unless Company has otherwise notified Bank in writing. Bank may pay a Paper Item after a stop payment order has expired, even though the Paper Item is more than six (6) months old. An instruction to revoke a stop payment order must be received in a time and manner that gives Bank a reasonable opportunity to act on it.

Liability to Holder in Due Course.

Notwithstanding Bank's timely return of any Paper Item due to a valid stop payment order, Company may still be liable under the laws governing this Agreement for the amount of that Item.

Paper Items Paid Over Valid Stop Payment Orders.

If Bank pays a Paper Item over a valid stop payment order, Bank may require Company to provide Bank with an affidavit describing in detail Company's dispute with the payee. If Bank credits Company's Account after paying a post-dated Paper Item over a valid and timely notice of post-dating, Bank may charge Company's Account for the amount of the Paper Item as of the date of the Paper Item.

Overdrafts, Security Interest; Bank's Right to Setoff

Overdrafts and Insufficient Funds.

Bank may, at its option, pay or refuse to pay any Item if it would create an Overdraft on Company's Account, without regard to whether Bank may have previously established a pattern of honoring or dishonoring such an Item. Bank may take either of the following actions if Bank receives an Item drawn on Company's Account and there are insufficient available funds in Company's Account to cover the Item, without prior notice to Company:

- ~~Pay the Item and create an Overdraft on Company's Account.~~ MM SSS
- Return the Item if the Item would create an Overdraft on Company's Account.

~~Company agrees to pay Bank's fee that may vary depending on the action Bank takes. Any Overdraft on Company's Account is immediately due and payable, unless Bank agrees otherwise in writing. Company agrees to reimburse Bank for the attorneys' fees and other costs and expenses Bank incurs in recovering the Overdraft (including Overdraft and associated fees). On a Business Day when Bank determines that there are sufficient funds in Company's Account to pay one or more but not all of the Items presented for payment on Company's Account, the order in which Bank posts such Items may affect the number of Items paid and the Overdraft and returned item fees assessed. When Bank posts Items in the order of highest to lowest dollar amount, the Overdraft and returned item fees may be more than these fees would be if Bank were to post the Items in the order of lowest to highest dollar amount.~~

Security Interest; Bank's Right to Setoff.

To secure Company's performance of this Agreement, Company grants Bank a lien on and security interest in Company's Account and Company's accounts with any Affiliate. In addition, Company acknowledges Bank may setoff against any Account(s) (including matured and unmatured time Account(s)) for any obligation Company owes Bank at any time and for any reason as allowed by the laws governing this Agreement. These obligations include both secured and unsecured debts and debts Company owes individually or together with another person. Bank may consider this Agreement as Company's consent to Bank's asserting its security interest or exercising its right of setoff should the laws governing this Agreement require Company's consent. If Company's Account is an unmatured time account, Bank may deduct any early withdrawal fee that may be due as a result of Bank having exercised its right of setoff. If Company has a Sweep

~~Account, Company also authorizes Bank to redeem Company's shares in the Designated Money Market Fund and apply the proceeds to any obligation Company owes Bank. The rights described in this subsection are in addition to and apart from any other rights, including any rights granted under any security interest that Company may have granted to Bank.~~ MM SSS

Bank Fees and Expenses

General.

Company agrees to pay Bank in accordance with the fee and information schedule. Company also agrees to pay an amount equal to any applicable taxes, however designated, exclusive of taxes based on the net income of Bank.

Payment of Bank Fees and Expenses; Finance Charges.

Bank may either directly debit Company's Account or invoice Company for Bank fees and expenses and taxes incurred in connection with Company's Account and any Service. If an Earnings Allowance accrues on Company's Account, Bank will periodically apply Company's accrued Earnings Allowance to Bank fees and expenses (unless Bank otherwise indicates in writing). Bank may debit Company's Account for any other Account Company maintains at Bank's invoice Company for any amount by which the fees and expenses exceed the accrued Earnings Allowance on Company's Account. Bank may also debit Company's Account (and any other account Company maintains at Bank) for attorneys' fees and any other fees and expenses Bank incurs in exercising its rights under this Agreement including Bank's rights in connection with Overdrafts, Adverse Claims, Legal Process and "Freezing" Company's Account. If there are insufficient funds in Company's Account to cover the debit, Bank may overdraw Company's Account. Company agrees to promptly pay any invoiced amount. Bank may assess finance charges on any invoiced amounts that are not paid within forty-five (45) days of the date of invoice. Finance charges are assessed at a rate of 1.5% per month (18% per annum) or the highest amount permitted by the laws governing this Agreement, whichever is less. Charges for accrued and unpaid interest and previously assessed finance charges will not be included when calculating finance charges. Payments and other reductions of amounts owed will be applied first to that portion of outstanding fees attributable to charges for accrued and unpaid interest and previously assessed finance charges, then to other fees and expenses. Debiting of service fees occurs on the day of each calendar month Bank separately discloses to Company, or if the disclosed day is not a Business Day, on the next succeeding Business Day.

~~Company maintains at Bank's invoice Company for any amount by which the fees and expenses exceed the accrued Earnings Allowance on Company's Account. Bank may also debit Company's Account (and any other account Company maintains at Bank) for attorneys' fees and any other fees and expenses Bank incurs in exercising its rights under this Agreement including Bank's rights in connection with Overdrafts, Adverse Claims, Legal Process and "Freezing" Company's Account. If there are insufficient funds in Company's Account to cover the debit, Bank may overdraw Company's Account. Company agrees to promptly pay any invoiced amount. Bank may assess finance charges on any invoiced amounts that are not paid within forty-five (45) days of the date of invoice. Finance charges are assessed at a rate of 1.5% per month (18% per annum) or the highest amount permitted by the laws governing this Agreement, whichever is less. Charges for accrued and unpaid interest and previously assessed finance charges will not be included when calculating finance charges. Payments and other reductions of amounts owed will be applied first to that portion of outstanding fees attributable to charges for accrued and unpaid interest and previously assessed finance charges, then to other fees and expenses. Debiting of service fees occurs on the day of each calendar month Bank separately discloses to Company, or if the disclosed day is not a Business Day, on the next succeeding Business Day.~~ MM SSS

listed on the fee schedule that

Earnings Allowance.

Each month, the average monthly Investible Balance in a commercial demand deposit account may earn an "Earnings Allowance" which, depending on the arrangement with Bank, may be applied against that month's fees for the account. An Earnings Allowance in excess of the total monthly fees cannot be credited to the account as interest and may not be carried forward to the following month. Earnings Allowances are calculated on a 365/366-day year basis using an "Earnings Allowance Rate," which is a variable rate established by Bank (and which may be as low as zero percent). Bank reserves the right to change this rate at any time without notice to Company. If the account is an interest-bearing account, the account is not eligible to earn an Earnings Allowance.

Recoupment Fee.

The FDIC charges each insured bank a fee to cover its share of the cost of providing deposit insurance to depositors. The FDIC does not charge a bank's depositors for deposit insurance or require banks to pass the cost of deposit insurance on to their depositors. The FDIC does, however, permit a bank to recoup the cost of deposit insurance from its depositors, so long as the fee the bank charges its depositors does not reveal information that could be used to determine the bank's confidential supervisory ratings or mislead depositors by implying the FDIC is charging the fee. Bank assesses this Recoupment Fee to partially recover insurance premiums it pays to the FDIC for deposit insurance. The amount of the Recoupment Fee appears on the periodic statement or client analysis statement for Company's account and is based on the monthly average ledger balance Company maintains in its account. The Recoupment Fee is subject to change by Bank at any time without notice. For questions about the Recoupment Fee, Company may contact its relationship manager at Bank.

Bank's Use of Funds.

Bank may benefit from having the use of funds in customers' non-interest bearing accounts. Bank may use these funds to reduce its borrowing from other sources such as the Fed Funds market or invest them in short-term investments such as its Federal Reserve Account. This benefit may be referred to as "spread". It is not possible to quantify the benefit to Bank that may be attributable to a particular customer's funds because funds from all customers' non-interest bearing accounts are aggregated both for purposes of reducing Bank's borrowing costs and for investment and because Bank's use of funds may vary depending on a number of factors including interest rates, Federal Funds rates, credit risks and Bank's anticipated funding needs. Bank's use of funds as described in this paragraph has no effect or impact on Company's use of and access to funds in Company's account.

Checking Subaccounts

For each checking account, Bank may establish on Company's behalf a master account and two subaccounts. All information that is made available to Company about Company's Account will be at the master account level. The subaccounts are comprised of a savings account and a transaction account. On the first day of each month, Bank will allocate funds between the two subaccounts as it deems appropriate. Items received by Bank that are drawn against Company's master account will be presented for payment against the transaction subaccount. Funds will be transferred from the savings subaccount to cover items presented against the transaction subaccount as may be needed. On the sixth (6th) transfer from the savings subaccount during a statement period all of the funds on deposit in the savings subaccount will be transferred to the transaction subaccount. If Company's Account earns interest, the use of subaccounts will not affect the interest Company earns.

Miscellaneous

Acceptable Form of Paper Items; Document and Image Quality.

Company agrees to comply with Bank's specifications for Paper Items, including without limitation paper stock, dimensions, and other generally applicable industry standards for Paper Items and to include on Company's Paper Items Bank's name and address as directed by Bank. Certain features (such as security features) of an originally issued Item or a Deposited Item may impair the image quality of a substitute check, purported substitute check or electronic Item created by Bank or any third party. Bank will not be liable for any claims, demands, judgments or expenses paid, suffered or incurred by Company, and Company will indemnify Bank from and hold Bank harmless against any claims, demands, judgments or expenses paid, suffered or incurred by Bank, arising directly or indirectly as a result of or in connection with (i) the untimely return of any Paper Item Company has issued as a result of, and any presentation-related problem resulting from, the failure of the Paper Item to conform in any respect to Bank's Paper Item specifications, including without limitation, failure to include Bank's full name and address on the Paper Item, and (ii) any claim based on the image quality of a substitute check, purported substitute check or electronic Item, whether created by Bank or any third party.

Closing Company's Account.

Company may close Company's Account at any time. Bank may, in its sole discretion, close Company's Account at any time. If Bank closes Company's Account, Bank may send the Collected Balance on deposit in Company's

Account by ordinary mail to Company's most recent address shown on Bank's account records. Whether Company or Bank closes Company's Account, Company agrees to maintain on deposit in Company's Account sufficient funds (determined in Bank's sole discretion) to cover outstanding items to be paid from Company's Account, charge-backs including without limitation returned Deposited Items and Bank's fees and expenses. This Agreement shall continue to govern Company's Account until Bank makes a final disbursement from it. In addition, Bank will not be liable for any loss or damage that may result from dishonoring any of Company's items that are presented or otherwise received after Company's Account is closed. If Company's Account is an interest bearing account, the Account will cease earning interest from the date Company requests it be closed. If the Account balance does not reach zero within three (3) months from the date of Company's request, Bank may close the Account and send Company the balance as described above or return the Account to active status.

Contract Language.

English is the controlling language of the relationship between Company and Bank. Bank may translate its agreements, forms, disclosures and advertisements into another language for Company's convenience. However, if there is a discrepancy between Bank's English language materials and the materials in another language, the English language version is controlling, unless (i) Bank otherwise agrees with Company in writing; or (ii) the laws governing this Agreement specifically provide for a different result.

Credit Reports.

~~Company authorizes Bank to make any inquiries that Bank considers appropriate to determine if Bank should open and maintain an Account for Company. This may include ordering a credit (or other) report (e.g., information from any motor vehicle department or other state agency) on Company.~~

Disclosure of Information.

Generally, absent Company's consent, Bank will not disclose information about Company's Account, but may do so under the following circumstances: (i) to comply with the laws governing this Agreement; (ii) in connection with examinations by state and federal banking authorities; (iii) to comply with any legal process, including without limitation a subpoena, search warrant or other order of a government agency or court; (iv) when Bank determines that disclosure is necessary or appropriate in order to complete a transaction; (v) to verify the existence and condition of Company's Account for a third party, such as a merchant or credit bureau;

(vi) to provide information to Company's legal representative or successor; (vii) when reporting the involuntary closure of Company's Account; (viii) when Bank concludes that disclosure is necessary to protect Company, Company's Account, or the interests of Bank; (ix) to agents, independent contractors, and other representatives of Bank in connection with the servicing or processing of Company's Account or Account transactions, Account analysis or similar purposes; (x) to Bank's Affiliates and affiliated companies; or (xi) if Company gives Company's permission.

Dormant and Unclaimed Accounts.

Company's Account is dormant if, for one year for a checking account or three years for a Commercial Savings or Time Account, there is no customer initiated activity (except where the laws governing this Agreement require otherwise). If Company's Account is dormant, Bank may hold all statements on Company's Account, but Bank's normal maintenance and other fees will continue to be assessed except where prohibited and ATM and Point-of-Sale ("POS") access may be blocked. If Company's Account remains dormant and is unclaimed by Company for the period required under the laws governing this Agreement, Bank is required by those laws to "escheat" the funds; that is, to deliver the funds in Company's Account to the state whose laws govern Company's Account. Bank may charge a fee to Company's Account for mailing an escheat notice. When the funds in Company's Account are delivered to the state, Company's Account is closed, and no interest accrues. To recover funds delivered to the state, Company must file a claim with the state.

Entire Agreement; Headings; No Third Party Beneficiary.

This Agreement constitutes the entire agreement between Company and Bank regarding the subjects addressed in it and supersedes prior oral or written representations, conditions, warranties, understandings, proposals or agreements regarding Company's Account. Headings do not constitute a part of this Agreement. No person or entity will be deemed to be a third party beneficiary under this Agreement.

Laws Governing this Agreement.

The laws governing this Agreement include the laws and regulations of the United States and, to the extent applicable, the laws of the state in which the Bank office that maintains Company's Account is located (unless Bank has notified Company in writing that the laws of another state shall govern Company's Account), without regard to conflicts of laws principles. If Company's Account was not opened in person at a Bank office (for example, if Company opened its Account by phone, through the mail or over the Internet), this Agreement will be governed by the laws of the state in which

Bank's main office is located, unless Bank notifies Company that its Account has been assigned to a particular Bank office, in which event the laws of the state in which that office is located will govern this Agreement. Any lawsuits, claims or other proceedings relating in any way to Company's Account, any Service or this Agreement, including without limitation, the enforcement of the Arbitration Agreement in this Agreement and the entry of judgment on any arbitration award shall be venued exclusively in the courts of the state whose laws govern this Agreement, without regard to conflict of laws principles. Each provision of this Agreement stands alone. Any provision of this Agreement which is inconsistent with the laws governing this Agreement, either in its entirety or with respect to a particular type of transaction or Item, will be deemed modified and applied in a manner consistent with the laws governing this Agreement. Any provision of this Agreement which a court of competent jurisdiction determines to be unenforceable or invalid, either in its entirety or with respect to a particular type of transaction or Item, will not affect the enforceability or validity of the remaining provisions of this Agreement.

Notwithstanding the preceding paragraph, any funds transfer that is a "remittance transfer" as defined in Regulation E, Subpart B, as amended from time to time, will be governed by the laws of the state of New York, including New York's version of Article 4A of the Uniform Commercial Code, without regard to its conflict of laws principles.

Minimum Balance Requirements; Other Restrictions.

Bank may impose minimum balance requirements or other applicable limitations, or restrictions on Company's Account, provided such requirements, limitations or restrictions are disclosed to Company.

Modification of Agreement; Account Conversion.

~~Bank may in its sole discretion from time to time change this Agreement by adding new provisions or by modifying or deleting existing provisions. Each such addition, modification or deletion is referred to in this Agreement as a "modification." When applicable law requires Bank to notify Company of a modification, Bank may do so by posting notice of the modification in Bank or at Bank's home page (www.wellsfargo.com), by including a message on or with the statement for Company's Account or by any other means that Bank considers appropriate, unless the laws governing this Agreement requires notice by a specific means. In addition, Bank may agree in writing to waive a provision of this Agreement including without limitation a fee (a "waiver"). Bank may upon prior written notice to Company revoke any waiver. Company's continued use of Company's Account or a related Service following the effective date of any modification or revocation of any waiver.~~

~~will show Company's consent to that modification or revocation of waiver.~~
Bank may convert Company's Account to another type of account at any time, provided Bank gives Company any advance notice that may be required.

Monitoring and Recording Communications.

Bank may without liability monitor, record and retain telephone conversations, electronic messages, electronic records and other data transmissions between Company and Bank at any time without further notice to Company, unless further notice is otherwise required by the laws governing this Agreement.

No Fiduciary Relationship.

Bank's relationship with Company concerning Company's Account is that of debtor and creditor; no fiduciary, quasi-fiduciary or special relationship exists between Company and Bank.

Reliance on Bank Records.

Bank may rely solely on its records to determine the form of ownership of and the Authorized Signers on Company's Account.

Reordering Checks.

Company can reorder checks by mailing the reorder form enclosed in Company's current order of checks or by calling Bank at the telephone number shown on the statement for Company's Account. If Company or a third party prints its checks, Bank shall have no liability to Company if Bank is unable to process such checks by automated means.

Restricted transactions.

Company acknowledges and agrees that "restricted transactions," as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG issued thereunder, are prohibited from being processed through Company's Account or any relationship between Company and Bank. In the event Bank identifies a suspected restricted transaction, Bank may block or otherwise prevent, or prohibit such transaction and, further, Bank may close the Account or end the relationship.

Transferring an Interest in Company's Account.

Company's Account may not be pledged, assigned or in any other manner transferred, whether in whole or in part, without Bank's written agreement.

II. Additional Terms Applicable to All Commercial Interest-Bearing, Savings and Time Accounts

Interest-Bearing Accounts

~~Variable/Fixed-Rate Accounts. will earn interest at the rate set in the fee schedule. Company's interest-bearing account may be either a variable-rate or fixed-rate account. Unless Bank has specified otherwise in writing, Company's Account will be a variable-rate account. That means Bank may in its sole discretion change the interest rate on Company's Account at any time. If Company's Account is a fixed-rate account and it is not a time account, Company will be paid the specified interest rate for at least thirty (30) days.~~

Method Used to Calculate Earned Interest.

Bank may use either the average daily balance or daily balance method to calculate interest. The average daily balance method applies a periodic rate to the average daily collected balance for the period. The average daily balance is calculated by adding principal for each day and dividing by the number of days in the period. The daily balance method applies a daily periodic rate to principal each day. Unless Bank has specified otherwise in writing, it will use the daily balance method to calculate interest. If Company's Account is a tiered-rate account, Bank may pay the same interest rate on more than one tier.

Interest Accrual.

If Company deposits a non-cash item, such as a check, interest begins to accrue no later than the Business Day Bank receives credit for the deposit of that item. This may not be the same day that Company deposits the non-cash item to Company's Account.

Compounding and Crediting.

Interest will compound on a daily basis. For checking and savings accounts, interest will be credited on a monthly basis. For time accounts, Bank will notify Company separately as to the frequency with which interest will be credited to Company's Account.

Target Balance Accounts.

If Company maintains multiple accounts at Bank, Company may, with Bank's consent, designate in writing one such account as its "Principal Account" and one or more additional accounts as "Target Balance Accounts." For each Target Balance Account, Company will separately specify to Bank in writing the Ledger Balance or Collected Balance which Company wishes

to maintain in such account (the "Target Balance"). At the end of each Business Day, Bank will determine the applicable balance on deposit in each Target Balance Account. If the applicable balance in a Target Balance Account exceeds its Target Balance, Bank will transfer from the Target Balance Account to the Principal Account such funds as are necessary to bring the applicable balance to the Target Balance. If the applicable balance is less than the Target Balance, Bank will transfer from the Principal Account to the Target Balance Account such funds as are necessary to bring the applicable balance to the Target Balance. Bank may, but will not be required to, transfer funds if the transfer would create an overdraft or exceed the Collected Balance then on deposit in the Principal Account.

Interest Adjustments.

An interest adjustment may be reflected on the statement for Company's Account for the month after it occurs rather than the month in which it occurs.

Tax Identification Number Certification.

Treasury regulations require Bank to obtain a Tax Identification Number ("TIN") certification for each account. To avoid backup withholding tax on accounts that earn interest or dividends, Company must submit Internal Revenue Service ("IRS") Form W-9 or the appropriate Form W-8 and supporting information and/or documentation to Bank. U.S. citizens or other U.S. persons, including resident alien individuals, must provide a Form W-9. If Company is a non-resident alien as defined by the IRS, Company must provide the appropriate Form W-8. Additional documentation may be required if Company is a foreign partnership, foreign government, or is claiming an exemption based on Effectively Connected Income. Until Bank has received the completed and signed Form(s) W-9 or W-8, or any other required forms, Bank will pay interest and comply with the backup withholding requirements of the IRS. If, at any time, Bank receives information that someone other than Company is using the same TIN that Company certified as its TIN on Form W-9, and Bank is not able to determine to its own satisfaction that the TIN has been assigned to Company, Bank may at its option and without notice (i) stop paying interest on Company's Account, (ii) continue paying interest but comply with the backup withholding requirements of the IRS and/or, (iii) take any other action which Bank believes is reasonable in the circumstances. If Company is an individual who owns its Account as a sole proprietor, upon that individual's death, Bank must be provided with the individual's estate's or successor's TIN or Bank may either refuse to pay interest earned on Company's Account since the date of the individual's death or withhold a portion of the interest that has been earned on Company's Account since the date of the individual's death.

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Commercial Savings Accounts

Bank's Right to Require Notice.

Bank has the right to require seven (7) days' written notice before Company withdraws money from Company's savings Account.

Limitations on Transfers from Company's Savings Account.

Preauthorized transfers, automatic transfers, online transfers, payments to other persons and transfers by telephone from Company's savings Account are limited to six (6) a month.

Preauthorized transfers include automatic bill payments, transfers to Company's other Accounts with Bank or automatic transfers to other persons that Company has authorized Bank to make. If Bank permits transfers from Company's savings Account by check, draft, point of sale POS purchases, check card or any similar order for withdrawal, no more than three (3) of the six (6) transfers may be made by such means in a calendar month or statement cycle. If Bank determines that Company is exceeding the limits described above on more than an occasional basis, Bank will, at its option, either close Company's savings Account, transfer the funds on deposit in Company's Account to another account that Company is eligible to maintain, or terminate Company's right to make transfers and write items against Company's savings Account.

Commercial Time Accounts

General.

Commercial Time ("time") Accounts include deposits which are payable, either on a specified date or at the expiration of a specified time, no less than seven (7) calendar days after the date of deposit. Bank may refer to a time account as a "certificate of deposit" or a "CD," even though the time account is not represented by a certificate.

Certificated Time Accounts.

If Company receives a certificate evidencing Company's time Account, Bank may require Company to present the certificate and any amendments to receive payment or transfer ownership.

Maturity Date.

Company's time Account will mature at the end of the term stated on Company's receipt, disclosure or certificate, as applicable.

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Time Requirements.

Company agrees to keep Company's funds on deposit until the maturity date. Company may make withdrawals from Company's time Account on the maturity date or within the grace period after that date. Bank will not agree in advance to allow withdrawal before maturity.

Payment of Interest.

If Company has elected a payment of interest other than a credit to Company's time Account, Bank may in its sole discretion terminate it in favor of crediting Company's time Account. Ordinarily, such discretion will be exercised when an interest payment mailed to Company's Account address has been returned undelivered or when an Account to which Company's interest payments were automatically credited has been closed, or if the interest payment amount is less than any minimum amount disclosed in the fee and information schedule.

Additional Deposits.

Other than during the grace period, Company may not make additional deposits to Company's time Account, unless Bank otherwise agrees in writing.

Withdrawal of Interest Prior to Maturity.

A withdrawal of interest prior to maturity will reduce earnings.

Renewal Policies.

If Company's time Account is automatically renewable, at maturity it will renew (i) for a like term; and (ii) at Bank's interest rate in effect on the maturity date for a new time deposit of the same term and amount, unless Bank has notified Company that it will not renew Company's Account. Company may withdraw Company's funds anytime during the grace period without a fee. If Company does, Bank will not pay interest for that period on the funds withdrawn. If Company's time Account is not automatically renewable and Company does not withdraw the funds on the maturity date, the funds will no longer earn interest after the maturity date and will be placed in a non-interest-bearing checking Account.

III. Funds Transfers

General.

Funds transfers to or from Company's Account will be governed by the rules of any funds transfer system through which the transfers are made, as amended from time to time, including, without limitation, the national

Automated Clearing House Association and any regional association (each, an "ACH") and Clearing House Interbank Payments System ("CHIPS"). The following terms are in addition to, and not in place of, any other agreements between Company and Bank regarding funds transfers.

Notice of Receipt of Funds.

Unless Bank has otherwise agreed in writing, it will notify Company of funds electronically debited or credited to Company's Account through the statement for Company's Account covering the period in which the transaction occurred. Bank is under no obligation to provide Company with any additional notice or receipt.

Reliance on Identification Numbers.

If a transfer instruction describes the person to receive payment inconsistently by name and account number, payment may be made on the basis of the account number even if the account number identifies a person different from the named person. If a transfer instruction describes a participating financial institution inconsistently by name and identification number the identification number may be relied upon as the proper identification of the financial institution.

Duty to Report Unauthorized and Erroneous Fund Transfers.

Company agrees to exercise ordinary care to determine whether a fund transfer to or from Company's Account was either erroneous or not authorized and will notify Bank of the facts within a reasonable time not exceeding fourteen (14) days after Bank sends or makes available to Company the statement for Company's Account on which the transfer appears or Company otherwise has notice of the transfer, whichever is earlier. Company will be precluded from asserting that Bank is not entitled to retain payment unless Company objects to payment within the fourteen (14) day period.

Erroneous Payment Orders.

Bank has no obligation to detect errors in payment orders (for example, an erroneous instruction to pay a beneficiary not intended by Company or to pay an amount greater than the amount intended by Company, or an erroneous transmission of a duplicate payment order previously sent by Company). Should Bank detect an error on one or more occasions, it shall not be construed as obligating Bank to detect errors in any future payment order.

Automated Clearing House (ACH) Transactions.

The following terms apply to payments to or from Company's Account that are transmitted through an ACH:

- Company's rights as to payments to or from Company's Account will be governed by the laws that govern Company's Account.
- Credit given by a receiving bank to its customer for a payment from Company's Account is provisional until final settlement has been made or until payment is considered received under the laws that govern Company's Account.
- If final settlement or payment is not made or received, the receiving bank will be entitled to a refund from its customer and Company, as the originator of the payment will not be considered to have paid Company's customer.
- If a payment is made to Company's Account and Bank does not receive final settlement or payment is not received under the laws governing this Agreement, Company will not be considered to have received payment, and Bank will be entitled to reimbursement from Company for that payment.
- Company hereby authorizes any Originating Depository Financial Institution (ODFI) to initiate, pursuant to ACH Operating Rules, ACH debit entries to Company's Account for electronic presentation or representation of items written or authorized by Company.

IV. Selected Services

~~Stagecoach Deposit - ATM Deposit Only Card Service~~

~~Company may elect to utilize Bank's Stagecoach Deposit® - ATM Deposit Only Card Service by completing and returning to Bank the set-up form for the Service. This Service allows Company to make deposits to Company's Account using a Stagecoach Deposit® - ATM Deposit Only card ("Deposit Card") and a designated Wells Fargo® ATM ("ATM"). Company will make such deposits according to the instructions Bank provides and will gain access to the ATM using the Deposit Card and a Personal Identification Number ("PIN"), the risk of misuse of both of which Company assumes. Bank will provisionally credit each deposit to Company's Account based on the amount Company keys into the ATM. Company's ATM deposits are subject to the standard cut-off time established for the ATM into which the deposit was made and Bank's funds availability policy applicable to Company's Account. If the dollar amount of Company deposit as determined by Bank differs from Company's total (as shown on Company's ATM receipt), Bank will send Company a statement showing the amount of this difference. Company agrees Bank's count of the dollar amount of Company's deposit will be conclusive and binding on Company. Company~~

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~~will have full responsibility for each deposit and its contents until the deposit has been completely and physically accepted into the ATM. If Company returns any portion of a deposit was lost or stolen while in Bank's custody, Company acknowledges Company has the burden of proving its claim. If Company orders supplies for the ATM Deposit Service through the ATM, Company authorizes Bank to initiate debits to Company's Account and credits to the accounts of third party vendors to cover the cost of such supplies provided to Company. Such transfers may be processed through an automated clearing house or any other means chosen by Bank and will be subject to the rules of the funds transfer system used by Bank. Company's authorization will remain in full force and effect until Bank has received written notification from Company of its termination in such time and manner as to afford Bank and any third-party vendor a reasonable opportunity to act on it.~~

Stagecoach Deposit® - Post Verify Service.

If Company elects to utilize Bank's Stagecoach Deposit® - Post Verify Service, Company will prepare, package and deliver Stagecoach deposits to Bank in accordance with Bank's instructions. Bank will provisionally credit Company's Account for the currency shown on the deposit ticket enclosed in Company's Stagecoach deposit bag as follows: (i) same day credit for deposits delivered to an office of Bank before that office's cut-off time on any Business Day or for deposits placed in night depository of Bank before 6:00 a.m. on any Business Day; or (ii) next Business Day credit for deposits delivered to an office of Bank on any Business Day on or after Bank's office's cut-off time or on any non-Business Day. All Stagecoach deposits are subject to Bank's acceptance and verification. Bank will verify the currency in Company's Stagecoach deposit bag either at a later time in Bank's office or when Company's Stagecoach deposit bag is delivered to Bank's cash vault. Checks will be verified when they are delivered to Bank's check processing center. Bank reserves the right to adjust (debit or credit) Company's Account if Bank determines that the amount shown on Company's deposit ticket is incorrect. Because the frequency of armored courier transportation from Bank's offices to Bank's vaults varies from office to office, the time it takes to verify Company's Stagecoach deposit may vary, depending on the office to which Company's Stagecoach deposit bag is delivered. In most cases, adjustments will be made and notification will be sent within three (3) Business Days. Adjustments will be effective when they are processed.

COMMERCIAL ELECTRONIC OFFICE® ("CEO"®) SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Commercial Electronic Office Service ("CEO"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The CEO is Bank's electronic banking portal that is accessed via the Internet. Authorized Representatives (see section 3) may use the CEO to access (a) Bank Services in which Company has separately enrolled (each, an "Accessed Service") and (b) third-party sites Bank may make available through the CEO. Bank offers different channels through which Company may access the CEO that may include without limitation personal computers and mobile devices. Bank may add or eliminate channels at any time. A Bank Service or third party site accessible through one channel may not be accessible through another channel. The Service Documentation includes the Service Description for each Accessed Service. In the event of a conflict between the Service Description for the Accessed Service and this Service Description, the Service Description for the Accessed Service will control.
3. **Access to the CEO.** When Company enrolls in the CEO and as Bank may determine is necessary after enrollment, Bank will (in accordance with section 4) provide one or more secure means of accessing the Services (each, a "Log-On Credential") to the persons who are authorized to access the CEO on Company's behalf (each an, "Authorized Representative"). Log-On Credentials may include without limitation Company and user IDs, passwords, token IDs and other means of providing secure access to the CEO Service that Bank adopts after the date Company begins using the CEO and may be changed by Bank at any time. Bank will have no obligation to Company to authenticate separately any communication Bank receives in Company's name through the CEO, whether or not an Authorized Representative actually issued the communication. Bank may, at Bank's sole option, contact Company with respect to any communication Bank receives in Company's name, but Bank's election to contact Company with respect to one or more communication will not obligate Bank to contact Company with respect to any subsequent communication Bank receives in Company's name.
4. **Administration of the CEO.**
 - 4.1. **General.** Bank offers two options for administering the CEO: (a) self-administration and (b) Bank administration.
 - 4.2. **Self-Administration.** If Company enrolls in Bank's self-administration option, there are three categories of Authorized Representatives: Company Administrator, Administrator or User. Bank provides Bank's then-current Log-On Credentials only to Company's initial Company Administrator(s) who will (a) assign Bank's Log-On Credentials to other individuals and (b) designate each such individual as (i) a Company Administrator, who may perform all functions of Company's initial Company Administrator; (ii) an Administrator, who may perform all the functions of an Administrator including without limitation designating other Administrator(s) and User(s); or (iii) a User, who may access those Services as designated by a Company Administrator or an Administrator and

those in which Bank permits a User to self-enroll. Each Company Administrator and Administrator has the authority to enroll Company in additional Services. Company will promptly revoke the Log-On Credentials of any Authorized Representative when that individual is no longer an Authorized Representative.

- 4.3. Bank Administration.** If Company does not enroll in Bank's self-administration option, there is one category of Authorized Representatives: Users. Bank will assign Bank's then-current Log-On credentials to each User Company designates. Each User Company designates will remain authorized until Bank has a reasonable time to act after receiving Company's notification that the User is no longer so authorized.
- 5. Restricting or Terminating Access to the CEO.** Bank will not be obligated to permit any Authorized Representative to use any Service through the CEO if Bank determines such use is (a) not in accordance with any term applicable to the CEO, (b) not permitted by any state or federal law or regulation, (c) not authorized by Company or any third person whose authorization Bank believes is necessary for such use, or (d) should be denied for Company's or Bank's protection (without Bank's agreeing to, or being required to, make this determination in any circumstance).
- 6. Financial Information.** Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to Bank (collectively, "Financial Information") may be available to Company at the CEO. The posting of any Financial Information or any other information or data at the CEO will not be a recommendation by Bank of any particular Service or transaction. Bank does not guarantee the accuracy or completeness, (a) of any Financial Information, (b) is not responsible for the actions or omissions of the third parties developing or transmitting Financial Information or (c) for any decision made or action taken by Company in reliance on any Financial Information.
- 7. CEO Workstation Service.** This section contains additional terms applicable to Bank's CEO Workstation Service. The CEO Workstation enables Company to view and use for global cash positioning, forecasting and trending data that (a) Bank automatically populates from Company's deposit account(s) at Bank and other financial institutions Company directs to provide data to Bank and (b) Company manually populates. Bank will not verify the accuracy of information from other financial institutions, customer-populated data or forecasting information. Forecasting information is not a guarantee of actual performance. If Company uses the Workstation to convert funds in an account to a currency other than the currency in which the account is denominated, the rate used through the Workstation may differ from the rate actually used when the funds are converted on a given Business Day.
- 8. Company's Representations and Warranties.** Company represents and warrants to Bank:
- 8.1.** Company's governing body has duly authorized each Authorized Representative, regardless of whether Company enrolls in Bank's self-administration option, Bank Administration or whether the individual is designated to act as Company Administrator, Administrator or User; and
- 8.2.** Company will preserve the confidentiality of the Log-On Credentials and immediately notify Bank if Company becomes aware or suspects that any Log-On Credential may have been compromised.

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~~9. **Company's Agreement to Indemnify Bank.** Company will indemnify and hold Bank, its parent company, and its affiliates and each of their respective directors, officers, employees, and agents harmless from and against all losses, damages, claims, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered by any of them arising directly or indirectly from or related to any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description.~~

10. **Survival.** Sections 3, 4, 5, 6, 7, 8 and ~~X~~ will survive termination of the Service.

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COMMERCIAL ACCOUNT AUTHORIZATION & AGREEMENT (SIGNATURE CARD)

(This document to be used when establishing a new account only.)



(CoID)

ACCOUNT NUMBER(S)	1				
	2				
	3				
II. ACCOUNT TITLE(S)	1				
	2				
	3				
III. ACCOUNT TYPE (Check One Box Only)					
<input type="checkbox"/> Commercial Checking (Non Interest)		<input type="checkbox"/> Commercial Checking with Interest		<input type="checkbox"/> Commercial Money Market Account	
<input type="checkbox"/> Other					
IV. BUSINESS INFORMATION					
Customer Name ("Accountholder")					
Business Location/Street Address			City	State	Zip
Mailing Address			City	State	Zip
Business Phone () - Ext.		Alternate Phone () - Ext.		Primary Contact Name	
Type of Entity (Check One Box Only)					
Business		Public Funds		Financial Institution	
<input type="checkbox"/> Corporation		<input type="checkbox"/> City / Municipality		<input type="checkbox"/> Commercial Bank	
<input type="checkbox"/> Corporation (Professional)		<input type="checkbox"/> County		<input type="checkbox"/> Savings Bank	
<input type="checkbox"/> Corporation (Nonprofit)		<input type="checkbox"/> State		<input type="checkbox"/> Credit Union	
<input type="checkbox"/> Partnership (General)		<input type="checkbox"/> Federal (US Government)			
<input type="checkbox"/> Partnership (Limited)		<input type="checkbox"/> Other			
<input type="checkbox"/> Joint Venture		<input type="checkbox"/> Indian Tribal Entity		Internal	
<input type="checkbox"/> Limited Liability Company				<input type="checkbox"/> WF & Co Sub	
				<input type="checkbox"/> WFB Subsidiary	
Business Organized under the Laws of (Jurisdiction)			Annual Sales \$		
Date Business Established			Number of Employees		
Date Current Owner Since / Mgmt Started			Accountholder or any entity for which account will be maintained (f/b/o) engaged in business of internet gambling? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Wells Fargo Banker to Complete					
Business License #: Dated:			Date of Last Banker Visit to Business Address:		
Fictitious Name Statement Date			Banker Name & Customer Contact/Visited		
V. TAX REPORTING & CERTIFICATION					
Employer Identification Number ("EIN"): _____					
CERTIFICATION: Under penalties of perjury, I certify that:					
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and					
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and <input type="checkbox"/> You must check this box if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.					
3. I am a U.S. Citizen or other U.S. person (For federal tax purposes, you are considered a U.S. person if you are: an individual who is a U.S. citizen or U.S. resident alien; a partnership, corporation, company, or association created or organized in the United States or under the laws of the United States; an estate (other than a foreign estate); or a domestic trust.)					

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

X _____

Signature

Position / Title

Date

***Notice to Nonresident Alien Individuals and Foreign Entities** (e.g. foreign corporations, partnerships, trusts, etc.): Do not complete the above Substitute W-9. Instead complete the certification statement below.

On behalf of the Company named in this document, I certify that the Company understands and will promptly comply with the Form W-8 filing requirement with Wells Fargo Bank _____, N.A, and as checked below that the Company is:

- A non-resident alien individual or non-resident foreign corporation (Form W-8BEN);
- A foreign partnership (Form W-8IMY);
- A foreign tax-exempt organization or government (Form W-8ECI or Form W-8EXP);
- Acting as an intermediary (Form W-8IMY);
- Claiming exemption based on income effectively connected with the conduct of a trade or business within the United States (Form W-8ECI).

X _____
Signature

Position / Title

Date

VI. AUTHORIZED SIGNERS

(Sign within Box)

Signature 1 Printed Name Position / Title

[Signature Box]

Signature 2 Printed Name Position / Title

[Signature Box]

Signature 3 Printed Name Position / Title

[Signature Box]

Signature 4 Printed Name Position / Title

[Signature Box]

Signature 5 Printed Name Position / Title

[Signature Box]

Signature 6 Printed Name Position / Title

[Signature Box]

VII. ACKNOWLEDGEMENT & AGREEMENT

On behalf of the Accountholder, I hereby certify, by my signature below, that each of the individuals designated in Section VI above as an "Authorized Signer" is authorized, acting alone, to (i) sign checks drawn on, and make cash withdrawals from, the Account, (ii) request stop payment orders for checks drawn on the Account, and (iii) initiate funds transfers by ACH, wire or other means out of the Account in accordance with the Accountholder's contractual arrangements with Wells Fargo regarding these services.

Wells Fargo may obtain credit reports or other information about the Accountholder. Wells Fargo may disclose information about each account to its affiliates, to credit reporting agencies, and to other persons or agencies that, in Wells Fargo's judgment, have a legitimate purpose for obtaining the information.

I acknowledge that the Accountholder has received a Commercial Account Agreement and agree that its terms and conditions, as amended from time to time, will govern the Account.

X _____
Authorized Signature

Position / Title

Date

Printed Name:

BANK USE ONLY		ACCOUNT NO(S):	
Date Received / / 20	Banker Name	Banker Telephone () -	Banker MAC
AU	RAU	Officer Number	RPM Family Name
			RPM Family Number

FORWARD VIA GOLD BAG TO DOCUMENT MANAGEMENT OR MAC N9777-133

COMMERCIAL DEPOSITORY SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") commercial depository services (each, a "Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** With the Service, Company may order currency and coin (collectively, "cash") from Bank's cash vault and Bank will make such cash available to an armored car service acting as Company's agent ("Agent") at Bank's cash vault.
3. **Cash Orders from Bank's Cash Vault.**
 - 3.1. **Cash Requests.** Company may request in writing, telephonically by operator-assisted call or by touch tone/automated response, or electronically via transmission, facsimile, or Bank's *Commercial Electronic Office*[®] (*CEO*[®]) portal (each a "Cash Request") that Bank make available to Company's Agent at Bank's cash vault, in an amount designated in the Cash Request, shipments of cash (each a "Cash Shipment") in bags or other containers ("Cash Bags"). Bank is authorized to act upon any Cash Request Bank receives in accordance with this Service Description, and which Bank believes in good faith to have been made by an authorized representative of Company. Bank has no obligation whatsoever to verify, and will not be liable for its failure to verify or investigate, any Cash Request.
 - 3.2. **Making Cash Available to Company's Agent.** Bank is authorized to make Cash Shipments available to any person whom Bank in good faith believes to be Company's Agent. Bank will have no further responsibility, and Company assumes all risk of loss, for cash made available to any such person. Bank will make Cash Shipments available only at the locations, on days, and during the hours published by Bank from time to time. Bank reserves the right to suspend the Service at any time without notice.
 - 3.3. **Company's Authorized Representatives.** Company will promptly certify to Bank the identity of: (a) the person with whom Bank is authorized to communicate regarding authorization codes or other security procedures; (b) Company's Agent authorized to accept delivery of cash; and (c) where applicable, the persons who are authorized users of the Service. Company will give prior written notice to Bank of any change in the person(s) or Agent so authorized by Company. Bank will be fully protected in relying on each such notification and on the obligation of Company to promptly notify Bank of any change in the person(s) or Agent so authorized by Company.
 - 3.4. **Security Procedures.** For requests made in writing or by facsimile, operator-assisted telephone call or transmission, a Customer ID assigned by Bank is required. For CEO requests, a User ID assigned by Bank is required. For touch-tone/automatic response telephone requests, an Access Code is required which can be assigned either by Bank or by Company. Operator limits may also be required. It is Company's responsibility to put into place internal procedures that will minimize the risk of an unauthorized person gaining access to the Customer ID, User ID(s) and Access Code(s). Such internal

procedures include without limitation requiring users to maintain such number(s) and code(s) in strict confidence. Company will notify Bank immediately in the event a breach of security is suspected.

3.5. Debit of Account. On the Business Day that Bank makes available any Cash Shipment to Company's Agent, Bank is authorized to debit Company's designated account at Bank's or Bank's affiliate ("Designated Account") for the aggregate amount of the shipment. Company will maintain collected balances in the Designated Account sufficient at all times to cover fully any debit. Bank has no obligation to release a requested Cash Shipment or any portion thereof to Company's Agent unless there are sufficient collected funds in the Designated Account to fully cover the amount of the Shipment at the time the Shipment is to be made available to Company's Agent. If Company fails to specify a Designated Account to Bank, Bank may debit any account which Company maintains with Bank for the amount of a requested Cash Shipment.

3.6. Packing Slip; Differences in Shipment Amount. Each Cash Shipment will be accompanied by a packing slip. The packing slip will disclose the aggregate amount of the Cash Shipment, the overall number of containers included in the Cash Shipment, and the number of containers delivered to Company's Agent for transmittal to Company. With respect to any Cash Shipment made available to Company's Agent, Company will notify Bank immediately in writing of any difference between the amount specified on the packing slip for that Shipment and the amount, as counted by Company, of the Shipment. In the event that the difference cannot be resolved, Bank's count of the amount of the disputed Shipment will be conclusive and binding on Company.

4. Delivery and Processing of Deposit Shipments at Bank's Cash Vault. The following procedures will govern Company's delivery of currency, coin, checks, other negotiable instruments or food coupons (each a "Deposit Shipment") to Bank's cash vault locations, and Bank's processing of such Deposit Shipments:

4.1. Use of Agent to Deliver Shipments. Company will deliver Deposit Shipments in deposit bags or other containers ("Deposit Bags") to one of Bank's cash vaults via an armored car service acting as Company's agent ("Agent"). Company is responsible for making all arrangements with its Agent for delivery of Deposit Shipments. Bank may accept Deposit Shipments from any person Bank believes in good faith to be Company's Agent. The delivery of a Deposit Bag to Bank or Bank's receipt for it on a manifest will not be deemed proof of Bank's receipt of the contents listed on the deposit slip contained in the Deposit Bag or Company's records. Bank will have no responsibility for any Deposit Bag or its contents delivered to one of Bank's cash vaults until the Deposit Bag is accepted by Bank in accordance with its procedures and the contents of the Deposit Bag are counted by Bank.

4.2. Delivery Procedures. In delivering a Deposit Shipment to Bank's cash vault, Company agrees to comply (and to cause its Agent to comply) with the following procedures:

- Deliver Deposit Bags only at the locations, on the days, and during the hours published by Bank from time to time;
- Properly endorse all checks and other negotiable instruments included in a Deposit Shipment;
- Use only Bank-approved Deposit Bags that are properly secured;

- Specify the number of Deposit Bags belonging to Company which are included in the overall shipment delivered to Bank, as well as the contents of each Deposit Bag, on a delivery manifest, a copy of which Company's Agent will provide to Bank at the time of delivery;
- Obtain the signature of Bank's employee who accepts delivery on that portion of the delivery manifest which the Agent retains; and
- Retain a copy of the receipt or other document covering each Deposit Bag delivered by Company to its Agent for at least one year from the date of delivery to Company's Agent.

Company agrees that Deposit Bags will be used only for the deposit of currency, coin, checks, other negotiable instruments or food coupons (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Deposit Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur.

4.3. **Cut-off Time; Deposit to Designated Account.** If a Deposit Shipment is received at one of Bank's cash vaults on a Business Day before Bank's published "cut-off time" for that cash vault, the aggregate amount of the deposits in such Shipment will be credited on that Business Day to the account with Bank specified on the deposit slip for that Shipment (the "Depository Account"). If a Deposit Shipment is received at a cash vault on a Business Day after Bank's "cut-off time," the aggregate amount of the deposits in that Shipment will be credited to the Depository Account on the next succeeding Business Day. Bank will not deposit any items received in any Deposit Shipment unless the account number of the Depository Account into which the deposit is to be made is specified on the deposit slip for that Shipment.

4.4. **Processing of Deposit Shipments.** Company authorizes Bank to open each Deposit Bag, count the contents, credit the amount of items to the Depository Account indicated on the deposit slip contained in the Deposit Bag and process any food coupons, all in accordance with Bank's customary procedures. All deposits are subject to verification, and Bank's count of the items will be conclusively deemed to be correct and complete for all purposes. No relationship of debtor and creditor will arise between Bank and Company until the count has been completed and the deposit credited to the Depository Account. Company acknowledges that it has had an opportunity to have Bank's applicable count and verification procedures explained to its representative and agrees that the same will be deemed commercially reasonable. Company understands that no photocopying or microfilming of items will be performed at any cash vault location.

4.5. **Adjustment Procedures.** If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is less than that reported on the deposit slip covering that Shipment, Bank will debit the Depository Account specified on the deposit slip by such difference and report the difference to Company. If that Depository Account has an insufficient collected and available balance to cover the debit, Bank will debit any of Company's other accounts with Bank for the difference, and Company agrees to promptly reimburse Bank for the difference (or any portion thereof) for which there are insufficient available balances in Company's accounts with Bank. If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is more than that reported on the deposit slip covering the Shipment, Bank will credit the Depository Account specified on the deposit slip for the difference and notify Company of the difference.

5. Delivery and Processing of Deposit Shipments at Bank's Night Depository Locations.

The following procedures will govern Company's delivery of currency, coin, checks, other negotiable instruments or food coupons (each a "Night Deposit") to Bank's night depository locations, and Bank's processing of Night Deposits.

5.1. Night Depository Locations; Issuance of Keys. Company may make Night Deposits to its deposit account(s) with Bank by placing the items to be deposited into disposable bags furnished by Bank (each a "Night Bag") and then placing the Night Bags in the night depository receptacle ("Night Depository") at one of Bank's branches/stores (each a "Store") listed on Bank's Night Depository Set-up Form. Each office of Company listed on the Night Depository Set-up Form will receive one key to the Night Depository at a designated Store. Company will designate in writing to Bank the individuals to receive the key for each of its offices; Bank may require such individuals to sign a receipt for the keys they receive.

5.2. Contents of Night Bags; Deposit of Night Bags. Company agrees that Night Bags will be used only for the deposit of currency, coin, food coupons, checks or negotiable instruments properly endorsed by Company (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Night Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur. Each Night Bag must contain one or more deposit slips listing all the items contained in that Bag and their total dollar amount, and identifying the deposit account of Company into which the dollar amount of the deposit is to be credited (the "Designated Account"). After each Night Bag is placed in a Night Depository, the Night Depository must be securely locked. At the time each Night Bag is placed in a Night Depository the Bag must be securely closed and placed completely in the Night Depository.

5.3. Processing of Night Deposits. Bank may open each Night Bag and remove its contents without Company or any of its representatives being present. The contents of each Night Bag will be processed in accordance with Bank's standard procedures, and if placed in a Night Depository before Bank's established "cut-off time" on any Business Day, those items acceptable for deposit will be deposited into the Designated Account as of the close of business on that same Business Day. The cut-off time for deposits made through the night depository may be different from that for deposits made at the teller line. Night Deposits placed in a Night Depository after Bank's established "cut-off time" will be credited to the Designated Account on the next succeeding Business Day. Company understands and agrees that the contents of a Night Bag will not be credited to the Designated Account, nor will the relationship between Company and Bank be that of a debtor to a creditor with respect to any item in a Bag, until Bank has accepted the item for deposit into the Designated Account after counting all the items in the Bag and calculating the total dollar amount of all such items.

5.4. Counting and Adjustment Procedures. If Company's records regarding the total dollar amount of the items in any Night Bag differ from Bank's calculation of the total dollar amount of the items in the Bag, Company has the burden of proving that its records show the correct amount in the Bag or Bank's total will be accepted as final. If there is a difference between Bank's total and Company's total for the amount of items in a Night Bag (as Company's total is shown on the deposit slip or slips in the Bag), Bank will send Company a statement indicating the amount of the difference. In the event that the difference cannot be resolved, Bank's count of the dollar amount will be conclusive and binding on Company.

- 5.5. Claims of Lost or Stolen Items.** Company will have the burden of proving the amount of any item which it claims was lost or stolen while it was at a designated Store and that disappearance of the item occurred while it was at the designated Store. Company agrees to notify Bank immediately if Company determines that any Night Bag or any item in a Night Bag has been lost or stolen while at one of Bank's Stores. Company agrees that it will have total responsibility for each Night Bag and its contents until the Bag has dropped completely into a Night Depository.
- 6. Special Instructions.** Company may submit to Bank in writing any special handling instructions it may have in connection with cash orders or deposits of items at Bank's cash vault or night depository locations. Bank may at its option accept or reject the instructions and so notify Company. Even if accepted, Bank may stop complying with the instructions upon prior notice to Company if, in Bank's opinion, continued compliance would increase Bank's costs or risks, interfere with its established or revised procedures, or diminish the efficiency of Bank's operations. Any loss attributable to increased risk resulting from a special handling procedure will be borne solely by Company.
- 7. Survival.** Sections 3.6, 4.4., 4.5., 5.4., 5.5., and 7 will survive termination of the Service.

CONTROLLED DISBURSEMENT SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing Wells Fargo Bank, N.A. ("Bank")'s controlled disbursement service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Required Account(s) and Services.** Company, as defined in the Acceptance, will establish and maintain:
 - (a) one or more demand deposit accounts with Bank or Bank's affiliate (each, a "Funding Account");
 - (b) one or more checking accounts (each, a "Disbursement Account") at Bank or Bank's affiliate(s) (each, a "Disbursing Bank"); and
 - (c) the information reporting service specified by Bank ("Information Reporting Service").

Each Funding Account and Disbursement Account and the Information Reporting Service will be identified in the Service Documentation. Each Funding Account will be linked to one or more Disbursement Accounts maintained by Company. Company will use each Disbursement Account solely to issue checks (or payable-through drafts) and electronic debits (each, a "Debit") in accordance with this Service Description. Company will not issue any Debits on any Disbursement Accounts until Bank notifies Company that such Disbursement Account is operational. Company irrevocably authorizes Disbursing Bank to release to Bank all information requested by Bank with respect to each Disbursement Account.

Each Disbursement Account and Funding Account will be governed by Wells Fargo Bank, N.A.'s Commercial Account Agreement ("Account Agreement"), except that if Company's Funding or Disbursement Account is Bank's Choice III account, "Account Agreement" will mean Wells Fargo Bank, N. A.'s Business Account Agreement. The term "Bank" as used in the Account Agreement will mean the bank at which such Disbursement Account or Funding Account is maintained.

3. **Determination of Total Net Presentment.** Each Business Day as defined in the applicable Account Agreement, by the reporting times Bank separately discloses to Company from time to time, Bank will make the Total Net Presentment for each Disbursement Account available to Company by means of the Information Reporting Service. The Total Net Presentment consists of the total dollar amount of:
 - (a) Debits that have posted in the first and, if applicable, second presentment on that Business Day; and
 - (b) Adjustments to the Disbursement Account reported on Bank's CD Summary report, including without limitation Debits posted after the last presentment on the prior Business Day (these Debits are referred to collectively as the "Prior Day Funding Adjustments").

If the Total Net Presentment is not made available through the Information Reporting Service by

the applicable reporting time, Bank will have no liability, and Company will estimate the Total Net Presentment.

4. **Company's Obligation to Deposit Funds in Funding Account.** Each Business Day, by the applicable cutoff time Bank separately discloses to Company from time to time, Company will deposit good and collected funds in Funding Account so that the balance in Funding Account, determined in accordance with the applicable Account Agreement, is sufficient to cover either the Total Net Presentment or Company's estimate of the Total Net Presentment.

If Company fails to transfer funds in accordance with its obligation under the preceding sentence or if such transfer was based on Company's estimate of the Total Net Presentment and such estimated amount was less than the actual Total Net Presentment, Bank may, at its sole option,

- (a) advance to Funding Account(s) sufficient funds to pay the Debits presented for payment on the Disbursement Account and transfer such funds to the Disbursement Account; or
- (b) return, or cause Disbursing Bank to return, any Debits, in any order, unpaid (even though Bank or the Disbursing Bank may have previously established a pattern of paying such Debits). If Bank returns or causes Disbursing Bank to return the Debits, Bank is authorized to instruct the Disbursing Bank to return to Bank any funds Bank transferred to Disbursing Bank pursuant to Section 5.

5. **Transfer of Funds to Disbursement Account.** Each Business Day, Bank will (a) transfer from the Funding Account to the Disbursement Account the amount necessary to cover the Total Net Presentment as shown on the CD Summary Report for that Business Day and (b) advance funds to the Disbursement Account in the amount sufficient to cover Debits that posted to Disbursement Account after the last presentment on that Business Day (and this amount advanced by Bank will be reported on the CD Summary Report for the next Business Day)

6. **Disbursing Bank's Obligation to Pay Debits.** No Disbursing Bank will have any obligation whatsoever to pay any Debit if sufficient good and collected funds to cover the Debit are not in the Disbursement Account on which the Debit is drawn at the time the Disbursing Bank makes its payment decision.

7. **Company's Agreement to Repay Bank's Advances to Disbursement Account(s).** Company will unconditionally pay Bank on demand without setoff or counterclaim in good and collected funds the full amount of any advance Bank makes pursuant to Section 4(a) and Section 5 plus Bank's fees and costs incurred in connection with such advance.

8. **Security Interest.** As security for the Obligations (as defined in this Section 8), Company pledges to Bank, and grants a lien to Bank on, and a security interest in, the following and the proceeds thereof (collectively, the "Collateral") as security for the prompt satisfaction of the Obligations: (a) all amounts from time to time on deposit in, or withdrawable from, Funding Account, all of Company's other accounts with Bank and Bank's affiliates and each Disbursement Accounts, and (b) any of Company's property, or property in which Company has an interest, now or at any time delivered, conveyed, transferred, assigned, pledged or paid to Bank in any manner whatsoever. "Obligations" includes any and all advances, debts, loans, obligations and liabilities that Company owes Bank and Bank's affiliates pursuant to the terms of this Service Description, including without limitation any advances Bank makes to Funding Account(s) pursuant to Section 4(a) of this Service Description and any advances Bank makes to Disbursement Account(s) pursuant to Section 5 of this Service Description. Bank's receipt at any time of any kind of security, including without limitation cash, will not be deemed a waiver of any of Bank's rights or powers under any agreement Company has signed in Bank's favor.

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Company will sign and deliver to Bank, on demand, all such security, control or other agreements, financing statements and other documents as Bank may at any time request which are necessary or desirable (in Bank's sole opinion) to grant to Bank a perfected security interest in and to any or all of the Collateral. At the time any Obligation becomes due and payable, Bank may sell or otherwise apply or dispose of any and all Collateral, received or to be received, in such parcel or parcels, at such time or times, at such place or places, for such price or prices and upon such terms and conditions as Bank may deem proper, and Bank may apply the net proceeds of the sale or sales, application or other disposition, together with any sums credited by or due from Bank to Company, to the payment of any and all of the Obligations, all without prejudice to Bank's rights against Company with respect to any and all of the Obligations which may be or remain outstanding or unpaid. Company expressly waives any right to require Bank to make any presentment or demand, or give any notices of any kind, including, but not limited to, any notice of nonpayment or nonperformance, protest, notice of protest, notice of dishonor, notice of intent to accelerate or notice of acceleration. Any requirement of reasonable notice to Company with respect to the sale or other disposition of Collateral will be met if the notice is given at least five calendar days before the date any sale, application or other disposition will be made. Bank's rights and remedies under any agreements or instruments signed by Company in Bank's favor are in addition to, and not exclusive of, any rights or remedies otherwise available to Bank under applicable law.

9. **Fees.** Fees for this Service may, in whole or in part, be based on the applicable fees charged by each Disbursing Bank and will be separately disclosed to Company. Fees will not be prorated if the Service terminates before the end of a calendar month.

10. **Protection Against Fraudulent Checks.** Company and Bank acknowledge that there is a growing risk of loss resulting from the increasing use of counterfeit and certain other types of fraudulent checks. Company recognizes that controlled disbursement service customers are especially susceptible to losses from these checks. Company is aware that Bank offers services known as "Image Positive Pay" and "Reverse Positive Pay" which are effective means of controlling risk from counterfeit checks and certain other types of fraudulent checks. Bank has advised Company that if it does not use either of these Services, Bank will be unable to prevent losses from counterfeit and certain other types of fraudulent checks and Company will be treated as having assumed the risk of those losses.

11. **Company's Enquiries and Instructions Regarding Disbursement Account.** Company will direct all enquiries and instructions (including by way of example and not by way of limitation stop payment orders) to Bank. In no event will any such enquiries or instructions be directed to Disbursing Bank.

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12. **Liability and Indemnification.** In addition to the liability and indemnification provisions in the Master Agreement, neither Bank nor any Disbursing Bank will be liable for any claim, demands, judgments or expenses ("Losses") paid, suffered or incurred by Company, and Company will indemnify Bank and each Disbursing Bank from and hold each of them harmless against any Losses paid, suffered or incurred by them, arising directly or indirectly as a result of or in connection with:

- (a) Company's performance or failure to perform its obligations in accordance with this Service Description;
- (b) Bank's or any Disbursing Bank's acting on any information furnished by or on behalf of Company in any Service Documentation or otherwise;
- (c) Bank's or any Disbursing Bank's return of any Check unpaid because Company has not deposited good and collected funds in the Funding Account related to the Disbursement

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Account on which a Debit is drawn sufficient to cover the Total Net Presentment;

- (d) Bank's or Disbursing Bank's dishonor and return of any Debit unpaid if Company issues the Debit before Bank notifies Company the Disbursement Account on which it was drawn is operational;
- (e) Bank's or any Disbursing Bank's nonpayment of a Debit, unless such nonpayment results directly and proximately from, respectively, Bank's or Disbursing Bank's gross negligence or willful misconduct;
- (f) Bank or Disbursing Bank's late return of any Debit as a result of, and any presentment-related problem resulting from, the failure of any Debit which has not been tested and approved by Bank or Disbursing Bank to conform in any respect to Bank's or Disbursing Bank's check specifications including without limitation failure to include Bank's or Disbursing Bank's full name and address and Bank's full name on any check or payable through draft,
- (g) Except as otherwise provided under Bank's Account Reconciliation, Image Positive Pay, Reverse Positive Pay, Payable-Through Draft, Share Draft or Payable-If-Desired Service Descriptions, if Bank provides Company with one or more of those services, Bank's payment of any check or payable-through draft which is unauthorized or contains a forged, unauthorized, incorrect or illegible endorsement, a forged or unauthorized signature, an alteration of amount or payee, or any other error, discrepancy or deficiency; or
- (h) Bank's exercise of its rights, or Bank's performance of its obligations, in accordance with this Service Description or Bank's Account Reconciliation, Image Positive Pay, Reverse Positive Pay, Payable-Through, Share Draft, or Payable-If-Desired Service Descriptions, if Bank provides Company with one or more of those Services.

13. Termination. Bank may terminate this Service, close the Funding Account, and instruct the Disbursing Bank(s) to close Disbursement Account(s), immediately upon Bank's sending Company written or oral notice (confirmed in writing) of such action if:

- (a) Company fails at any time to fund the Funding Account as required in this Service Description,
- (b) any lawsuit or other action or proceeding is filed or instituted by any federal or state agency alleging, or any Disbursing Bank receives an opinion of counsel, that this Service or any material term or condition of this Service violates any law or regulation,
- (c) Bank's agreement with any Disbursing Bank concerning this Service is suspended or terminated for any reason with respect to all Bank's customers receiving the Service or with respect only to Company,
- (d) the occurrence of any default by Company under the other Service Documentation or under any other agreement or instrument signed by Company in Bank's or the Disbursing Bank's favor including without limitation any loan agreement or promissory note,
- (e) Bank determines that one or more conditions exist or events have occurred which might indicate, or result in, a material adverse change in Company's operations, business, property or assets or its condition (financial or otherwise).

Handwritten initials/signature

Upon termination of this Service, Company will, in accordance with such instructions as Bank or the Disbursing Bank may give, cease to issue Debits on the Disbursement Account(s), and the Disbursing Bank will close the Disbursement Account(s) and stop processing Debits. Company will continue to be liable for all Debits issued on the Disbursement Account(s) prior to termination and for all Debits the Disbursing Bank is obligated to pay. The provisions of Sections 4, 7, 8, 10, 12 and 13 of this Service Description will survive termination of the Service.

14. **Governing Law.** Except to the extent governed by federal law and regulations, the law and regulations of the state in which the Disbursing Bank is located will govern its performance of the Service.

E-BILL EXPRESS SERVICE DESCRIPTION

1. **Introduction.** This Service Description is part of the Service Documentation governing Wells Fargo Bank, N. A.'s ("Bank") E-Bill Express service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is identified in the Acceptance.
2. **Description of Services.** With the Service, Bank maintains a website in Company's name ("Website") through which (a) Company makes electronic Bills available to purchasers of Company's products and services (each purchaser is a "Customer"), and (b) Customers make payments to Company using the channels for making a payment (each, a "Payment Channel"; see section 3) and the method(s) Company offers (each, a "Payment Method"; see section 4). Bank credits Customers' payments to the account at Bank that Company enrolls in the Service ("Account"). The Service includes an Administrative Module through which Bank offers electronic reporting options relating to Company's Bills and its Customers' payments, all as detailed in Bank's User Guide for the Service. The specific Services Bank will provide to Company are detailed in the Statement of Work to which Company and Bank agree separately ("SOW").
3. **Payment Channels.** The Payment Channels Bank offers to Company are detailed in Bank's User Guide for the Service and include the Website, telephone and an optional Interactive Voice Response (IVR) Payment Channel. With the telephone Payment Channel, a Customer arranges for a payment by telephoning Company at a telephone number Company maintains. For all Customer payments made through the telephone Payment Channel, Company is required to enter information about the payment at the Administrative Module. With the IVR Payment Channel, Bank maintains a Company-specific toll-free number and Company branded greeting and prompts.
4. **Payment Methods.** The Payment Methods Company may make available to Customers are detailed in Bank's User Guide for the Service and may include debit and credit cards and electronic payments through the automated clearing house ("ACH"). The Service Documentation includes, respectively, Bank's Payment Gateway User Agreement and ACH Origination Service Description, each of which in the event of a conflict between it and this Service Description will control over this Service Description. Bank may withdraw a Payment Method at any time.
5. **Information Reporting.** Information about Company's Bills and Customers' payments made through the Website, telephone and IVR Payment Channels is included in the information reporting available through the Administrative Module.
6. **Verification.** Bank will not verify the accuracy of Bills or its Customers' payment amounts made through any Payment Channel.
7. **Company's Privacy Policy.** Company will provide Bank with URL(s) hosted by Company for Bank's use at the Website. The URLs Company provides will direct Customers to Company's then-current privacy policy and terms of use. Company will maintain current versions of its privacy policy and terms of use.
8. **Licensed Marks.** Company grants to Bank a license to use the service marks, trademarks and or logos listed on Exhibit A (each, a "Licensed Mark") on the Website. Bank will not modify a

Licensed Mark without Company's prior written consent. The term of this trademark license will be the same as the term set forth in the Master Agreement, unless either party provides written termination in accordance with this Section 4 thereof. Either party may terminate this license at any time, with or without cause, upon notice to the other. Upon termination or expiration of this license, Bank will discontinue use of all Licensed Marks.

9. **Company's Representations and Warranties.** Company represents and warrants to Bank:
- (a) It will issue each Bill only for products or services actually provided to the Billed Customer and will retain each Bill for a minimum of two years from the date of the Bill;
 - (b) The billed amount will be the actual amount charged to the billed Customer for such products or services;
 - (c) Company is the sole owner of each URL Company provides to Bank pursuant to section 7 and each Licensed Mark;
 - (d) Company will maintain current versions of its privacy policy and terms of use at the URLs it provides to Bank; and
 - (e) Company has received a copy of Federal Reserve Board Regulation Reg E and will comply therewith at all times that Bank provides the Service.
10. **Survival.** Section 9 will survive termination of the Services.

E-BOX® SERVICE DESCRIPTION

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in a white, sans-serif font on a black rectangular background.

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") E-Box service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** Bank (a) receives electronic information ("Remittance Information") about payments Company's customers make to Company through online bill payment services and other payment channels described in Bank's Reference Guide for the Service (each, a "Payment"); (b) processes Payments for credit to Company's account at Bank ("Account"); and (c) provides information reporting on Payments to Company through Bank's separate Receivables Manager Service ("Remittance File"). The specific processing services Bank will provide to Company are detailed in the Statement of Work to which Company and Bank agree separately ("SOW"). Each Business Day, Bank credits Company's Account for Funded Payments (see section 3) via a consolidated Automated Clearing House ("ACH") credit entry ("File"). Bank originates each File in accordance with the National Automated Clearing House Association Operating Rules and any applicable local ACH rules (collectively, the "ACH Rules"). In order to enroll in the Service, Company will also enroll in Bank's Receivables Manager Service.
3. **Funded Payments.** A "Funded Payment" is a payment for which Bank receives Remittance Information and the funds relating to the Payment. Bank will process Payments for which Bank has received Remittance Information but not funding (each, an "Unfunded Payment") in accordance with the SOW.

IMAGE FILE IMPORT SERVICE DESCRIPTION

WELLS
FARGO

1. **Introduction.** This Service Description and the other Service Documentation as defined in the Master Agreement for Treasury Management Services ("Master Agreement") between Wells Fargo Bank, N.A. ("Bank"), and the company identified in the signature block of the Acceptance of Services ("Company") between Bank and Company govern Bank's Image File Import Service (the "Service").
2. **Description of the Service.** The Service enables Company to receive files containing images of and data regarding (each, a "File") specified transactions on each account at Bank that Company enrolls in the Service (each, an "Account"). The transactions include checks or other instruments (each, an "Item") (a) posted to Company's Account; (b) cashed or collected by Bank or accepted for deposit to Company's Account (each, a "Deposited Item"); and (c) returned unpaid to Company's Account (each, a "Returned Deposited Item"). The data Bank provides will include an index and images of each Item, Deposited Item and Returned Deposited Item together with, in the case of Deposited Items, images of coupons and other information that are received and processed by Bank along with the Deposited Item. Company may retrieve Files through the delivery channels Bank makes available.
3. **Conditions to Provision of the Service.** As conditions to Bank's provision of the Service, Company will (a) at all times maintain the Account(s) in good standing; (b) subscribe to the applicable Treasury Management Services for which images and data are provided through the Service; and (c) agree to the terms of the software sublicense (see Section 6) if Company has elected to use the WellImage® Viewer Software (the "Software") to view certain Items or Deposited Items.
4. **Rules Applicable to the Service.** Bank will provide the Service to Company in accordance with (a) the Service Documentation; and (b) state and federal laws and regulations, including the National Automated Clearing House Association Rules ("NACHA Rules") applicable to Paper Item conversion.
5. **Paper Item Conversion.** NACHA Rules allow for the conversion of certain Items into ACH items. Images of posted Items that have been converted pursuant to the NACHA Rules may not be available through the Service.
6. **Software Sublicense.** Company will use the Software in accordance with the terms of a non-exclusive, non-assignable sublicense ("Software Sublicense") from Bank. The Software Sublicense will be presented to Company during installation, and Company will be required to accept it before being allowed to use the Software. This Section will survive termination of this Service.
7. **Termination.** In addition to the termination provisions of the Master Agreement, the Service may also be terminated by Bank immediately on written notice to Company, if Company fails to comply with its obligations under the Software Sublicense.

IMAGE POSITIVE PAY SERVICE DESCRIPTION

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Image Positive Pay service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the Bank customer identified in the Acceptance.
2. **Description of Service.** The Service enables Company to instruct Bank to pay or return counterfeit Checks, Checks otherwise not validly issued and certain altered Checks presented to Bank for payment on the deposit account(s) at Bank that Company enrolls in the Service (each, an "Account"). Each Business Day, Bank electronically compares the serial number and numeric amount of Checks presented to Bank for payment before Bank's separately-disclosed cutoff time on the prior Business Day to Company's Check Issue Data (see section 5). In accordance with section 7, Bank will notify Company of each Check that does not match Company's Check Issue Data (each, an "Exception Item") and will pay or return each Exception Item in accordance with this Service Description. "Check" refers to each check presented for payment on Company's Account, whether it is counterfeit, not validly issued, altered or validly issued by Company. A "Business Day" is every day except Saturdays, Sundays, and federal holidays. Except as otherwise provided in this Service Description, enrollment in Bank's Account Reconciliation Plan ("ARP") Service is required.
3. **Service Options.** Company may enroll an Account in one of three options of the Service. The Service options differ based on (a) when Bank electronically compares a Check to Company's Check Issue Data (before or after posting the Check to Company's Account); (b) Bank's handling of errors on Checks; (c) the content of Bank's report to Company of discrepancies between a Check and Company's Check Issue Data ("Exceptions Report"); and (d) the time by which Company must notify Bank of Company's pay or return decision ("Decision Deadline"), as specified in the Exceptions Report. Each discrepancy is an "Exception," and each Check with a discrepancy is an "Exception Item."
 - 3.1. **Perfect Presentment[®] Positive Pay.** Bank electronically compares a Check to Company's Check Issue Data prior to posting the Check to Company's Account. Each Check with error(s) that Bank can correct, such as an encoding error, will be corrected, so that the Exceptions Report includes only unresolved Exception Items. This option is offered only on an Account enrolled in Bank's Controlled Disbursement Service.
 - 3.2. **Positive Pay and Positive Pay Only.** Bank electronically compares a Check to Company's Check Issue Data after posting the Check to Company's Account. Bank then reviews each Exception Item, and reverses and reposts each Exception Item with error(s) that Bank can correct, such as encoding errors, so that the Exception Report includes only unresolved Exception Items. Enrollment in Bank's ARP Service is not required for Positive Pay Only.
 - 3.3. **Basic Positive Pay.** Bank electronically compares a Check to Company's Check Issue Data after posting the Check to Company's Account and provides Company with an Exceptions Report containing all Exception Items including Checks with encoding errors.

4. **Payee Validation.** Bank offers Payee Validation with Perfect Presentment Positive Pay, Positive Pay and Positive Pay Only. In addition to performing the electronic comparison described in section 2, Bank electronically compares the payee's name on each Check to the payee's name in Company's Check Issue Data. If there is a discrepancy between the two names that is not within parameters Bank establishes from time to time in its sole discretion, Bank will, in its sole discretion, (a) include the Check as an Exception Item in Company's Exceptions Report (and the discrepancy will constitute an Exception), or (b) manually review the Check. There are two Payee Validation Options:

4.1. **Standard Payee Validation Option.** Bank validates the payee's name on each Check exceeding the dollar threshold determined by Bank from time to time without notice to Company. Bank will indemnify Company against actual direct money losses incurred by Company as a result of an unauthorized alteration of the payee's name on each Check paid by Bank (excluding hand-written Checks).

4.2. **Customized Payee Validation Option.** Bank validates the payee's name on each Check exceeding the dollar threshold that Company elects. ~~Company will indemnify Bank against actual direct money losses Bank incurs as a result of an unauthorized alteration of the payee's name on a Check below Company's defined dollar threshold, and~~ Bank will indemnify Company against actual losses Company directly incurs as a result of an unauthorized alteration of the payee's name on a Check equal to or greater than Company's defined dollar threshold (excluding hand-written Checks). *mm*

Bank will not perform Payee Validation with respect to a Check if (i) Company fails to include the payee's name on the Check in Company's Check Issue Data; (ii) Bank does not receive Company's Check Issue Data for the Check before the cutoff time Bank separately discloses; or (iii) Company requests Bank to add the payee's name manually to Check Issue Data Company has previously provided to Bank.

5. **Check Issue Data.** The "Check Issue Data" for any Check is the Check's complete serial number and numeric amount, and if Company has selected Payee Validation, the payee's name (or truncated name). As detailed in Bank's User Guide for the Service, a "truncated name" is the portion of a payee's name Company includes in its Check Issue Data based on the option it has elected from the options for truncation Bank offers from time to time. Each Business day not later than the cutoff time Bank separately discloses, Company will provide the Check Issue Data for all Checks issued through that Business Day to Bank in the format, through the medium, and at the place(s) Bank specifies. In performing the Service, Bank will use only the Check Issue Data Company provides to Bank. Bank will not electronically or manually compare a Check with an issue date after the current Business Day against the Checks presented for payment on the Account until the issue date contained on the future-dated Check register matches the current Business Day's calendar date. Bank will not accept Check Issue Data that contains an issue date more than forty-five (45) calendar days in the future.

6. **Payment of Matching Checks.** If a Check presented to Bank matches the Check Issue Data Company has provided to Bank (a "Matching Check"), Bank will make final payment on the Check and charge the Check to Company's Account (subject to section 13).

7. **Notification of Exception Item; Image of Exception Item.**

7.1. **Electronic Comparison.** When Bank identifies an Exception Item through its electronic comparison process, Bank notifies Company of the Exception Item through the Exceptions Report Bank makes available to Company through CEO.

- 7.2. **Manual Review.** When Bank manually reviews a Check in accordance with section 4 and identifies a payee name discrepancy, Bank will use its best efforts but in no event make more than one attempt to notify Company of the discrepancy by telephoning Company at the number Bank has on file for Company.
- 7.3. **Holdover Exception Items.** This subsection applies when Company has enrolled its Controlled Disbursement Account in Bank's Perfect Presentment Positive Pay Service. A "Holdover Exception Item" is an Exception Item Bank identifies after Bank prepares and transmits the Exceptions Report to Company. Bank will use its best efforts but in no event make more than one attempt to notify Company of each Holdover Exception Item by telephoning Company at the number Bank has on file for Company.
- 7.4. **Image of Exception Item.** Bank will use reasonable efforts to provide an image of any Exception Item (including a Holdover Exception Item) to Company, ~~but Bank will have no liability if Bank is unable to do so prior to Company's Decision Deadline.~~ *MM*
8. **Default Options for Checks Listed in Exception Report.** Bank offers two options for processing Checks listed in the Exceptions Report for which Company fails to instruct Bank to pay or return before the Decision Deadline (each, "Company's Default Option"). Company may elect to have Bank pay each such Check or to return each such Check. *MM*
9. **Company's Instructions to Bank; Failure to Instruct By Decision Deadline.**
- 9.1. **Company's Pay or Return Decision.** Company will make its pay or return decision based on the information about the serial number and amount of the Exception Item in the Exceptions Report, and if Company has elected Payee Validation, on any payee information Bank provides to Company.
- 9.2. **Instructions Prior to Decision Deadline.** If, prior to Company's Decision Deadline, Company instructs Bank to pay or return an Exception Item, Bank will follow Company's instructions (subject to section 13). For each Exception Item, Company will use the same communications channel to instruct Bank that Bank used to notify Company of the Exception Item. If Bank included the Exception Item on the Exception Report Bank makes available to Company through CEO, Company will use CEO to communicate its instruction regarding the Exception Item to Bank. If Bank attempted to contact Company by telephone, Company will telephone Bank to communicate its instruction.
- 9.3. **No Instructions Prior to Decision Deadline.** If Company does not instruct Bank prior to Company's Decision Deadline with respect to an Exception Item described in subsection 7.1, Bank will process the Check in accordance with Company's Default Option. If Bank is unable to obtain Company's instructions prior to the Decision Deadline regarding an Exception Item described in subsection 7.2, Bank will return the Exception Item unpaid (regardless of Company's Default Option). If Bank is unable to obtain Company's instructions prior to the Decision Deadline regarding a Holdover Exception Item described in subsection 7.3, Bank will process the Holdover Exception Item in accordance with Company's Default Option.
10. **Teller Line Checks.** A Check presented for encashment at Bank's teller line is a "teller line Check". A teller line Check that is not included in Company's Check Issue Data on file with Bank at the time it is presented for encashment is a "teller line Exception Item". Bank will take those steps to review and cash or refuse to cash a teller line Exception Item as Bank in its sole discretion determines are commercially reasonable. Company may instruct Bank to exclude all teller line Checks from this process, in which event each teller line Check will be deemed to be a Matching Check, even if it is not included in Company's Check Issue Data on file with Bank at the time it is presented for encashment.

Handwritten initials/signature

~~11. **Limitation of Liability and Indemnification.** Each Check Company has authorized or is deemed to have authorized Bank to pay in accordance with this Service Description (including each Matching Check) will be paid without Bank performing any Check verification procedure other than those described in this Service Description. Bank will have no liability for paying a Check if (a) there is an alteration in its serial number or amount; (b) Company has elected Payee Validation and Bank fails to identify an alteration or other exception in the payee's name because Company has truncated the name in Company's Check Issue Data; (c) it is counterfeit, bears a forged or unauthorized signature; or (d) it was otherwise not validly issued. Each Check that Bank pays in accordance with this Service Description will be deemed to be properly payable, and each Check that Bank returns in accordance with this Service Description will be deemed not to be properly payable. Without limiting the indemnification provisions contained in the other Service Documentation, Company (i) indemnifies and holds Bank harmless from any and all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) that Bank may suffer or incur as a result of Bank's payment or return of a Check at Company's instruction or otherwise in accordance with sections 9 or 10 of this Service Description, and (ii) releases and forever discharges Bank from all claims and damages, whether known or unknown, liquidated or unliquidated, contingent, direct or indirect, which Company has, or claims to have against Bank relating to the payment or return of any Check in accordance with this Service Description. This Section 11 will survive termination of the Service.~~

12. **Stop Payment; Cancel and Void Instructions; Stale-Dated Checks.** Company will not use the Service as a substitute for Bank's stop payment service. Company will follow Bank's standard stop payment procedures if it desires to stop payment on a Check that was validly issued. Company will use (a) a cancel instruction only to delete an outstanding Check included in its Check Issue Data and (b) a void instruction only to notify Bank that a Check included in Company's Check Issue Data has been destroyed and will not be re-issued. If Company elects to use Bank's "stale-dated" feature, Bank will return each Matching Check that is stale-dated unless Company instructs Bank to pay the Check. A Check is "stale-dated" when it is a Matching Check with an issue date exceeding the number of months Company elects as its stale date.

13. **Bank's Right to Return Checks.** Nothing in this Service Description will limit Bank's right to return any Check that Company has authorized Bank to pay in accordance with this Service Description if Bank determines in Bank's sole discretion that (a) the Check is not properly payable for any reason (without Bank's agreeing to, or being required to, make such determination in any circumstance), or (b) there are insufficient collected and available funds in the Account to pay the Check. As between Company and Bank, any determination by Bank not to pay a Check will not constitute wrongful dishonor of such Check.

14. **Survival.** Sections 4, 5, 7, 9, 10, ~~11~~ and 13 will survive termination of the Service.

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INFORMATION REPORTING SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Information Reporting services (each, a "Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Services.** The Services enable Company to view and or receive files containing data and/or images (each, a "File") regarding specified transactions on each deposit account at Bank that Company enrolls in the Service (each, an "Account"). The means used to transmit Files to Company include without limitation BAI File Transfer, Bank's Commercial Electronic Office[®] ("CEO"[®]), and CD-ROM. Depending on the Service Company elects, the transactions may include checks or other instruments (each, an "Item") (a) posted to Company's Account; (b) cashed or collected by Bank or accepted for deposit to Company's Account; and (c) returned unpaid to Company's Account. "Item" is defined in Bank's Commercial Account Agreement.
3. **Information From Company's Accounts at Other Financial Institutions.** If the Service Company elects permits Company to have information from deposit accounts Company maintains at other financial institutions imported to Bank and included in a report Bank provides to Company in connection with the Service, Bank will not verify the accuracy or completeness of the information.
4. **Software Sublicense.** If a software sublicense is required for Company to access the Service ("Software Sublicense"), Bank will make the terms of the Software Sublicense available to Company as part of the set up process for the Service. Company will be required to accept the Software Sublicense before being allowed to access the Service. Bank may terminate any Service requiring use of a Software Sublicense immediately on written notice to Company, if Company fails to comply with the Software Sublicense. Company's obligations under this section 4 will survive the termination of Service.

MASTER AGREEMENT FOR TREASURY MANAGEMENT SERVICES

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The Service Documentation described below contains the terms under which Wells Fargo Bank, National Association ("Bank") provides treasury management services ("Services"). The Bank customer to which the Services will be provided ("Company") is identified in the Acceptance of Services ("Acceptance").

Bank and Company agree:

1. **Service Documentation.** The Service Documentation for each Service includes:
 - 1.1. The Service Description.
 - 1.2. The Acceptance.
 - 1.3. This Master Agreement for Treasury Management Services ("Master Agreement").
 - 1.4. The account agreement for the deposit account(s) (each, an "Account") that Company or Company's affiliate or subsidiary maintains at Bank or Bank's affiliate in connection with a Service. The account agreement includes the Dispute Resolution Program that Company and Bank agree to use to resolve any disagreements between Company and Bank regarding accounts and Services governed by the Service Documentation.
 - 1.5. User Guides which include Terms of Use, software, software licenses, price schedules, specifications, instructions, and notices.
 - 1.6. The set-up form(s) for each Service.

The Service Documentation also applies to a Service that is provided by an affiliate of Bank and a Service that is used by an affiliate or a subsidiary of Company. "Bank" includes each such affiliate, and "Company" includes each such affiliate and subsidiary. If there is a conflict among the documents that make up the Service Documentation, the documents will govern in the order set forth above. Company acknowledges receiving a copy of the Service Documentation for each Service Bank provides to Company.

2. **Services.** Bank and Company will agree upon the Service(s) to be provided.
3. **Changes to Services.** Bank may change (or add to) the terms and fees in the Service Documentation at any time upon prior written notification to Company. If Company discontinues using the affected Service before the change becomes effective, it will not be bound by the change. If Company continues to use a Service after the change becomes effective, it will be bound by the change.
4. **Term and Termination.** Unless terminated sooner in accordance with the Service Documentation, this Master Agreement and all Services will continue in effect until terminated by either party upon thirty (30) days prior written notice to the other party (unless a Service is terminated sooner in accordance with the Service Documentation). Bank may terminate any Service (a) following notice to Company of a breach of any provision of the Service Documentation and Company's failure to cure the breach within fifteen (15) days of the date of

such notice, or (b) without notice to Company if (i) Company is subject to a petition under the U. S. Bankruptcy Code or (ii) Bank determines in its sole discretion that a material adverse change has occurred in Company's ability to perform its obligations under the Service Documentation. The termination of a Service will not affect Company's or Bank's rights with respect to transactions occurring before termination. Bank will not be liable to Company for any losses or damages Company may incur as a result of any termination of any Service.

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5. **Service Fees.** Company will pay Bank the fees ~~described in the Service Documentation and for any taxes applicable to each Service~~ ^{set forth in Exhibit C of the Fiscal Agent Agreement} ~~however designated~~ ^{exclusive of taxes based on Bank's net income.} ~~Bank may debit Company's account(s) with Bank for any fees not covered by earnings credits and any taxes that are due, or it may send an invoice to Company for such amounts, which Company shall promptly pay. Bank may assess finance charges at a rate of 1.5% per month (18% per annum) or the highest rate permitted under applicable law (determined in accordance with section 8.1), whichever is less, on any invoiced fees or taxes not paid within thirty (30) days of the due date and will apply payments and other reductions of amounts owed first to unpaid interest and then to other fees and charges.~~ ^{for this service}

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6. **Confidential Information.** ^{Unless subject to disclosure under the Inspection of Public Records Act and} Unless otherwise provided in the Service Documentation, all User Guides and software constitute Bank's or its vendor's confidential information ("Confidential Information"), and Company will not acquire any ownership interest in or rights to Confidential Information as a result of Company's use of any Service. Company will (a) maintain the confidentiality of the Confidential Information; (b) not disclose (or permit its employees or agents to disclose), copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than Company's employees who have a need to use the Confidential Information in connection with the applicable Service; and (c) not decompile, reverse engineer, disassemble, modify, or create derivative works of any Confidential Information. Company will notify Bank immediately if it knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "Unauthorized Use") of any Confidential Information. If Company (or its employees or agents) is responsible for the Unauthorized Use, Company will, ~~at its expense,~~ promptly take all actions, including without limitation initiating court proceedings to recover possession and prevent further Unauthorized Use of the Confidential Information and obtain redress for any injury caused to Bank as a result of such Unauthorized Use.

inless subject to disclosure under the inspection of Public Records Act,

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7. **Liability and Indemnification.**

7.1. Bank will perform each Service in accordance with reasonable commercial standards applicable to Bank's business; laws, regulations and operating circulars governing the activities of Bank; applicable funds transfer system(s) and clearinghouse rules; and the Service Documentation.

7.2. Bank is under no obligation to honor, in whole or in part, any entry, file, batch release, transfer instruction, payment order, transaction or instruction that (a) exceeds the available balance in the Account, unless otherwise provided in the Service Documentation; b) is not in accordance with the Service Documentation or Bank's applicable policies, procedures or practices as made available to Company; c) Bank has reason to believe may not have been duly authorized, should not be honored for its or Company's protection, or involves funds subject to a hold, dispute, restriction or legal process; or d) would possibly result in Bank violating any applicable rule or regulation of any federal or state regulatory authority including without limitation any Federal Reserve guidelines such as the limitations on Bank's intra-day net funds position.

7.3. All uses of Services through Company's ID codes, passwords, token cards, PINs, or passcodes (each, a "Code") will be deemed to be authorized by and binding on Company. ~~Company's failure to protect Codes may allow an unauthorized party to (a)~~

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~~use the Services, (b) access Company's electronic communications and financial data, and (c) send or receive information and communications to Bank. Company assumes the entire risk of unauthorized use of Codes and unencrypted electronic transmissions.~~ *MT*

7.4. Neither Bank nor any software vendor makes any express or implied representations or warranties with respect to the Services or any software used in connection with the Services including without limitation any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.

7.5. Company will promptly furnish written proof of loss to Bank and notify Bank if it becomes aware of any third party claim related to a Service. Company will cooperate fully (and at its own expense) with Bank in recovering a loss. If Company is reimbursed by or on behalf of Bank, Bank or its designee will be subrogated to all rights of Company. *MT*

~~7.6. Any claim, action or proceeding against Bank for losses or damages arising from a Service, including Bank's honoring or dishonoring a check covered by a Service, must be brought within one (1) year from the date of the act or omission or in the case of a check from the date the check was first paid or returned by Bank. *MT*~~

~~7.7. Bank will have no liability for failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond Bank's reasonable control. If Bank determines that any funds transfer or communications network, Internet service provider, or other system(s) it has selected to provide a Service is unavailable, inaccessible or otherwise unsuitable for use by Bank or Company, Bank may, upon notice to Company, suspend or discontinue the affected Service.~~

~~7.8. Except in the case of Bank's negligence or intentional misconduct, Company will indemnify and hold Bank, its directors, officers, employees and agents harmless from all losses or damages that arise out of (a) the performance of a Service in accordance with the Service Documentation including without limitation any warranty Bank is required to make to a third party in connection with a Service; (b) an act or omission of any agent, courier or authorized representative of Company; and (c) if the Service includes a license or sublicense of any software to Company, the use or distribution of the software by Company or any person gaining access to the software through Company that is inconsistent with the license or sublicense.~~

~~7.9. Bank will only be liable to Company for Company's direct monetary losses due to Bank's negligence or intentional misconduct. Except in the case of Bank's gross negligence or intentional misconduct, Bank's liability to Company will be limited to an amount not to exceed ten (10) times Bank fees incurred during the calendar month immediately preceding the calendar month in which such loss or damages were incurred (or, if no Bank fees were incurred in such month, Bank fees incurred in the month in which the losses or damages were incurred). Except as expressly provided otherwise in the Service Documentation, neither party to this Master Agreement will be liable to the other party for any special, consequential, incidental (including without limitation court costs and attorneys' fees), indirect, or punitive losses or damages, whether any claim is based on contract or tort, or whether the likelihood of such losses or damages was known to the other party and regardless of the form of the claim or action.~~

8. Miscellaneous.

8.1. The Service Documentation will be governed by substantive federal laws, regulations and rules and, to the extent such laws, regulations and rules are not applicable, those of the state in which the office of Bank that maintains the Account is located, without regard to conflicts of laws principles. Any portion of the Service Documentation which is inconsistent with applicable laws, regulations or rules will be deemed modified and applied in a manner consistent therewith, and Bank will incur no liability to Company as a result of the inconsistency or modification and application. If any portion of the Service Documentation is deemed unenforceable, it will not affect the enforceability of the remaining Service Documentation.

8.2. The Service Documentation is the entire agreement between Bank and Company and supersedes all prior representations, conditions, warranties, understandings, proposals or agreements regarding a Service. No course of dealing or waiver of any right on one occasion will constitute a modification of the Service Documentation or be a waiver of that right on a subsequent occasion.

~~8.3. Company will provide Bank promptly upon Bank's request any existing financial statements or other information pertaining to Company's financial condition or any previously unprepared financial statements which Bank may require Company to prepare and/or to be audited or reviewed by independent certified public accountants acceptable to Bank.~~

8.4. Company warrants it will not use any Service in a manner which violates any federal or state law including without limitation any sanction or control administered by the Office of Foreign Assets Control or Bureau of Export Administration.

8.5. If Company employs an agent in connection with its use of any Service, Company represents and warrants to Bank that (a) Company's governing body has duly authorized the agent and (b) Company will exercise appropriate controls to ensure each agent so authorized does not exceed the authority so granted to it. Any communication to Bank regarding Company's use of a Service from Company's agent will be deemed to be a communication from Company, and Company authorizes Bank to communicate with Company's agent regarding any such communication or Service.

8.6. Either party may provide notice to the other party by mail, personal delivery, or electronic transmission. Bank will use the most recent address for Company in Bank's records, and any notice from Bank will be effective when sent. Company will use the address where Company's relationship manager or other manager is located and address any notice to the attention of such manager. Any notice from Company will be effective when actually received by Bank. Bank will be entitled to rely on any notice from Company that it believes in good faith was authorized by an authorized representative of Company and, except as expressly stated in the Service Documentation, will have no obligation to verify the signature (including an electronic signature). Each party will have a reasonable time after receipt of any notice to act on it.

8.7. Sections 1, 4, 5, 6, 7, and 8 will survive termination of this Master Agreement.



WELLS FARGO® PAYCARD SERVICE DESCRIPTION AND TERMS OF SERVICE

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") PayCard Service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Service ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The Service allows Company to make payments to Wells Fargo PayCard users (each, a "Card User") by depositing funds into a specified account (which funds the Card) via transfers through an automated clearing house ("ACH"). Each Card User can then access deposited funds through certain national and regional automated teller machine and point of sale networks, as well as at any financial institution or merchant that accepts Visa® debit cards, by using a Wells Fargo® PayCard ("Card"). The Card is reloadable from time to time by Company via ACH transfers. For purposes of this Service Description, the term "Card" also includes Cards issued under the Instant Issue Card Program as described below.
3. **State Laws and Regulations.** In the event the Card is used by Company to pay wages, salaries, or other compensation to Card Users, Bank makes no representation or warranty regarding whether the Service will allow Company to satisfy any requirement or comply with any restriction which may be imposed upon Company as an employer under any state labor code or any other law or regulation, including, without limitation, laws prohibiting discount in wages or laws relating to fee restrictions. Company acknowledges that (a) it has made its own independent investigation and received its own legal advice, and Bank has made no representations or warranties to Company, regarding whether the use of the Service will allow Company to satisfy any such requirement or comply with any such restriction; and (b) Company is not relying on any information or opinion provided by Bank regarding any such requirement or restriction. Company further acknowledges that by electing to use the Service, it agrees to be bound by the terms and conditions set forth in this Service Description and Terms of Service ("Service Description") as well as the Service Documentation.
4. **Bank's Duties.**
 - 4.1. Under the Service, Bank shall issue Cards to Card Users. In connection with such issuance, Bank shall (a) prepare and deliver the Wells Fargo® PayCard Card User Enrollment Form (the "Enrollment Form") to Company; (b) prepare the Wells Fargo® PayCard Packets, including the required Bank disclosures and other materials contained therein (the "Card Packets"); and (c) deliver the Card Packets to Company for delivery to Card Users or directly to Card Users identified by Company, as directed by the Card User on the Enrollment Form.
 - 4.2. Upon request by a Card User, Bank shall deliver transaction history statements to the Card User at the address on the Enrollment Form and make transaction history information available electronically online to Card Users.
 - 4.3. Bank shall make balance information available telephonically to Card Users. Bank shall be responsible for Card customer service, including all Card service and billing inquiries (other than Card User inquiries related to the amount or timing of funds transferred to the Card by Company). Bank shall also process ACH transfers from Company's account to the specified account funding the Card pursuant to the Service.

- 4.4. To the extent applicable, Bank shall be responsible for discharging its obligations under unclaimed property laws in connection with the funds loaded on the Cards.

5. Company's Duties.

- 5.1. Company shall require each Card User to complete in full and sign an Enrollment Form.
- 5.2. Before submitting Card User information on an Enrollment Form to Bank or Bank's Agent, Company shall (i) review the Enrollment Form to ensure that it includes at a minimum the Card User's name, physical address, date of birth, and identification number, (ii) collect a copy of an unexpired government-issued identification document for Card User that evidences nationality or residence and bears a photograph or similar safeguard, such as a driver's license or passport, and (iii) verify that Card User information on an Enrollment Form is consistent with Card User information on Card User's identification document.
- 5.3. Company shall maintain copies of each Enrollment Form completed by a Card User and each identification document collected from a Card User pursuant to Section 5.2 above for a period of at least five (5) years after Card Users employment with Company terminates.
- 5.4. Company shall allow Bank or representatives of any government agency having jurisdiction over Bank, including, without limitation, the Office of the Comptroller of the Currency, upon reasonable notice to Company, to review Company's records in order to confirm that the requirements contained in Sections 5.1, 5.2 and 5.3 have been satisfied.
- 5.5. Company shall provide to Bank or Bank's agent, or both, as Bank requests (and in such format and through such electronic, magnetic, or other means or media as Bank may specify from time to time): (a) the Card User's name, street address, identification number, and date of birth (the "Identifying Information") provided by Card User in the Enrollment Form; (b) Card User's personalization information (i.e., embossing the Card with the name of Company or the Card User, or both); and (c) any other information Bank reasonably requests in connection with the issuance of the Cards.
- 5.6. On the Enrollment Form Card Users may authorize Company on Card Users' behalf to receive Card Packets, transaction history statements, and other materials regarding their Cards, in which case, Company shall promptly deliver to the Card Users the Card Packets, transaction history statements, and other materials provided by Bank from time to time. In all other circumstances, Bank shall deliver or make available the necessary material directly to the Card Users as provided in Section 4.2 above.
- 5.7. Without Bank's prior written consent, Company shall make no changes to the Enrollment Form, the Card Packets, including, without limitation, the disclosures and other materials contained therein, or any other materials, and any revisions or updates thereto, provided by Bank to Company or Card Users, or both, in connection with the Service.
- 5.8. Company shall: (a) maintain records adequate to prove that each Card User received a Card Packet, including the disclosures and other materials contained therein, and any revisions or updates thereto, and (b) allow Bank, upon reasonable notice to Company, to review Company's records in order to verify that this requirement has been satisfied.
- 5.9. Company shall safeguard all personal identification numbers ("PINs"), passwords, and other security codes and devices provided or used in connection with the Service (including, without limitation, all PINs or the Cards, or both, provided to Company for delivery to the Card Users) and make them available only to individuals who are

authorized to receive such codes and access devices. To the extent Company receives any transaction history statements or other material related to a particular Card User's use of his or her Card, Company agrees not to review or access in any way such information without Card User's consent.

- 5.10. As requested by Bank, Company shall provide to Bank, on each applicable business day and on a consolidated basis, the Funds Transfer Information for all Card Users. For purposes of this Service Description, the terms "Funds Transfer Information" means information provided to Bank by Company, either directly or through the ACH system, to credit, or debit the available funds of, any Card User, which information shall be provided to Bank in a form and through such electronic, magnetic, or other means or media as Bank may approve from time to time and shall include the date on which funds are to become available to the Card User.
 - 5.11. As requested by Bank, Company shall obtain from each Card User all authorizations required by applicable laws, regulations, or otherwise to perform transfers to credit or debit the available funds of such Card User.
 - 5.12. Company agrees to cooperate fully with Bank in furnishing any information or performing any action reasonably requested by Bank that is needed by Bank to perform its obligations under this Service Description or to comply with applicable laws and regulations. Company agrees that it shall furnish Bank with true, accurate, and complete copies of such records and all other information with respect to the Service as Bank or its authorized representative may reasonably request, provided however, that it shall not be required to divulge any records to the extent prohibited by applicable law.
 - 5.13. Company shall instruct Card Users to direct all their inquiries regarding the Cards to Bank's toll-free customer service number.
 - 5.14. Company shall give Bank timely written notice of any Card User authorization which has been rescinded or otherwise modified.
 - 5.15. Company shall not require an intended recipient of an electronic fund transfer under the Service to establish an account with Bank as a condition of employment.
 - 5.16. Company may make available to Card User only one Card per Card User at any given time. Card User may request that additional Cards be issued to persons whom Card User authorizes to have access to the funds associated with the Card ("Authorized Users"). Company reserves the right to limit the number of additional Cards that will be issued.
 - 5.17. Other than information necessary to use the Card, Company shall not disclose to Card User any information that would enable the Card User to cause any credit of funds to, or debit of funds against, the Card User's specified account.
 - 5.18. Company has the right to deduct funds from the funds accessible through a Card in order to correct a previous error or overpayment to a Card User or for other reasons in accordance with applicable law. Subject to this right, Company acknowledges and agrees that all funds transferred to a Card are owned by the Card User.
6. **Card User Prerequisite.** In order to receive and use a Card, a Card User shall have completed in full, signed, and submitted to Company the Enrollment Form, and received the disclosures and other materials contained in the Card Packet. Bank reserves the right to revoke any Card User's use of the Card in accordance with the PayCard Terms and Conditions ("Terms and Conditions"). Further, in addition to Bank's rights to terminate under the Master Agreement,

Bank may terminate Company's use of the Service if, in Bank's sole determination, there exist excessive levels of fraud, there has been a violation of this Service Description by Company, or Bank suspects abuse of the Service in any manner.

7. **Instant Issue Program.** Under this Service Description, Company may issue temporary Cards under the Instant Issue Program. To the extent that Company elects to participate in the Instant Issue Card Program, it shall have the ability to purchase a stack of Instant Issue Cards (such amount not to exceed 1000 Instant Issue Cards in any order) which shall be embossed with a generic identifier. Instant Issue Cards may be used only for new employees of Company, or such existing employees receiving a Card for the first time. They are not to be used as replacement cards for lost or stolen Cards or as termination cards. Should Company desire to order Instant Issue Cards, it should contact 1-800-AT-Wells. Such Instant Issue Cards will be funded via ACH and funds underlying the Instant Issue Card shall be accessible upon settlement of such ACH file. An Instant Issue Card may be loaded up to three times prior to issuance of a personalized Card to Card User; once a personalized Card is issued and activated, the Instant Issue Card associated with such personalized Card will be deactivated automatically. Company agrees that it shall comply with any and all applicable *Visa Instant Issue Security Standards* and *Visa U.S.A. Prepaid Card Issuance with a Generic Identifier Shipping and Storage Requirements*, which obligations include but are not limited to standards related to secure storage of Instant Issue Cards, submission of annual self-audits to Visa, and all other applicable Visa requirements, as amended or updated from time to time.
8. **Representations and Warranties.**
 - 8.1. As of each date that: (i) Company delivers the Identifying Information or the Funds Transfer Information, or (ii) pursuant to Company's instructions, the available funds of any Card User are credited or debited, Company represents and warrants that all information and amounts related to the Card User's Identifying Information or Funds Transfer Information, and on all paper, electronic, magnetic or other transmissions submitted in connection therewith, are accurate, true and correct and that, with respect to each Card User:
 - 8.1.1. For Card Users designating Company as his/her agent on the Enrollment Form, Company has delivered to such Card Users: (a) a Card Packet or, provided Bank has given its prior written approval for the delivery of Cards and the Terms and Conditions to such Card Users in a different manner, a Terms and Conditions (which has been delivered to such Card Users in the manner approved by Bank), and (b) unless Bank has agreed in writing to deliver PINs to such Card Users in a different manner, the PIN for such Card User.
 - 8.1.2. Company has delivered to such Card User all supplemental disclosure statements or other materials provided by Bank, from time to time;
 - 8.1.3. Company has been authorized by the Card User, in a manner or form which complies with all applicable federal, state, and local laws and regulations to (a) transfer such Card User's Identifying Information to Bank or Bank's agent, and (b) transfer such Card User's payment amounts or reimbursements to Bank for loading on to a Card and to credit or debit such Card User's available funds, and that such authorization has not been rescinded or otherwise modified and remains in full force and effect.
 - 8.2. Company warrants that with respect to any instructions to Bank to debit available funds of Card User, Company has complied with applicable state or federal law as to Company's right, as an employer, to debit the Card User's available funds.

8.3. Company warrants that it has not required any of its employees to complete and sign an Enrollment Form or otherwise agree to payment amounts through this Service. *MAC*

~~9. **Indemnification.** Company shall indemnify, defend, and hold harmless Bank, its respective affiliates, employees, representatives, successors, and permitted assigns from and against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs, and liabilities, including, without limitation, reasonable attorneys' fees and expenses incurred in investigation or defense, regardless of the theory of liability or the nature of the legal proceeding ("Damages"), to the extent such Damages arise out of or relate to Company's use of the Service as a means of compensating or reimbursing its employees or other payees or its failure to comply with this Service Description.~~

10. **Survival.** Sections 3, 6, 8, ~~and 9~~ shall survive termination of the Service.

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PAYMENT AUTHORIZATION SERVICE DESCRIPTION

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- 1. Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Payment Authorization Service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
- 2. Description of Service.** Company may, by executing and delivering to Bank a Payment Authorization Service Set-up Form, elect to utilize the Service for deposit accounts which Company maintains at Bank (each an "account"). Under the terms of the Service, Bank will without Company's specific approval as to any particular Item, (a) automatically return unpaid (marked "REFER TO MAKER") Items drawn against the account which are presented to Bank, and which exceed the "Maximum Dollar Authorized Payment Amount" specified on the Setup Form, (b) refuse encashment of Items drawn against the account which are presented to Bank through its branch/store network, and which exceed the "Maximum Check Cashing Amount" specified on the Setup Form, (c) refuse withdrawal requests against the account which are presented to Bank through its branch/store network, and which exceed the "Maximum over the Counter Withdrawal Amount" specified on the Setup Form, and/or (d) refuse encashment of Items drawn against the account which are presented to Bank through its branch/store network, and which are made payable to an individual.

PAYMENT MANAGER® SERVICE DESCRIPTION

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1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Payment Manager services (each, a "Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Services.**
 - 2.1. **Payment Manager Service.** The Payment Manager enables Company to send electronic files with multiple payment types and remittance information (each, a "Payment File") to Bank directly from Company's treasury workstation, ERP, or accounts payable system. Based on Company's Payment File, Bank generates (a) payments to third parties (each, a "Trading Partner") from Company's designated deposit account at Bank or Bank's affiliate (each, an "Account") and (b) remittance data regarding each payment. Payment types include automated clearing house ("ACH"), wire transfer, those card(s) Bank permits Company to use with the Service and check. Bank may add, modify or eliminate payment types at any time. For payments made by ACH, wire transfer or card, the Service Documentation includes, respectively, Bank's ACH Origination Service Description, Wire Transfer Service Description, or applicable card agreement, each of which, in the event of a conflict between it and this Service Description will control over this Service Description. Bank will make check payments in accordance with the Reference Guide for the Service.
 - 2.2. **Payment Manager PlusSM Enhanced Remittance Service.** With Payment Manager Plus, Bank uses the delivery channel to which Company and Bank separately agree to make human-readable documents describing the remittance (each, a "Remittance Document") available to each of Company's Trading Partners.
3. **Payment File Transmission.** Company will prepare each Payment File and deliver it to Bank in accordance with the guidelines Bank separately makes available to Company. Company will use the Transmission Protocol to which Company and Bank separately agree (see Section 5). Company may deliver Payment Files to Bank, and Bank will acknowledge receipt of Payment Files, twenty-four hours a day, seven days a week.
4. **Payment File Processing.** Bank will process Payment Files and make payments only on Business Days in accordance with the processing schedule Bank separately makes available. A "Business Day" is every day except Saturdays, Sundays and federal holidays.
5. **Transmission Protocols.** Bank offers the following means for Company to transmit Payment Files to Bank (each, a "Transmission Protocol"):
 - 5.1. **Secure Application File Exchange Transmission ("SAFE-T").** This transmission protocol offers a variety of transmission protocols including hyper text transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment File transmitted to Bank in Company's name.

- 5.2. **Machine-to-Machine ("M2M").** This transmission protocol uses an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL). Bank uses digital certificates to authenticate each Payment File transmitted to Bank in Company's name.
- 5.3. **Connect:Direct with Secure+.** This transmission protocol is used to connect Company's mainframe environment to Bank's mainframe environment. Secure+ is an add-on to Connect:Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Bank uses an agreed upon ID password combination and a token card to authenticate each Payment File transmitted to Bank in Company's name. Connect:Direct and Secure + are trademarks of Sterling Commerce.
- 5.4. **Value-Added Network ("VAN").** With this transmission protocol, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting files may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each Payment File transmitted to Bank through the VAN in Company's name.
6. **Payment File Validation.** Bank will inspect each Payment File received to confirm its format conforms to the requirements in the Reference Guide. Bank's inspection will not detect erroneous or missing information or unauthorized payments.
7. **Incomplete, Rejected Payment Files.** If a Payment File is missing a required Data Field for a payment described in it or if Bank has identified other errors that make it unable to process the File, Bank may, without liability to Company, reject the entire Payment File.
8. **Account Reconciliation Processing (ARP), Image Positive Pay and Payee Validation Services.** If Company utilizes Bank's Image Positive Pay Service, Bank will, at Company's request, update Company's Check Issue Data for checks Bank issues in accordance with the Payment Manager on the Business Day the checks are printed.
9. **Remittance Documents.** A Remittance Document made available to a Trading Partner via fax or unencrypted e-mail is not secure. It will conclusively be deemed to have been received by the Trading Partner when Bank makes it available. Bank will not confirm receipt of or be liable for corruption or loss of data in a Remittance Document after Bank makes it available.
10. **Payment and Delivery Preferences.** If Company elects to make Bank's Payment and Delivery Service available to its Trading Partners, Bank will not verify the account and routing information a Trading Partner provides through the Service and will have no liability to Company or the Trading Partner if any of this information is incorrect.
11. **Record Retention.** Company will retain a copy of a Payment File for thirty (30) days from its original transmission. Bank will retain a copy of each Remittance Document for 120 days from its original distribution.
12. **Survival.** Sections 2.1, 6, 7, 9, 10 and 11 of this Service Description will survive the termination of Services.

RECEIVABLES MANAGER SERVICE DESCRIPTION

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Receivables Manager services (each, a "Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The Service enables Company to receive consolidated electronic files and/or human readable documents containing information (each, a "File") regarding credits and/or debits to the deposit accounts at Bank that Company enrolls in the Service (each, an "Account") and associated remittance information. The User Guide details (a) the types of payments for which Bank provides the Service, (b) the options Bank offers for formatting Files, (c) the secure transmission platforms Bank offers to deliver Files to Company, (d) the schedule Bank follows in providing the Service, and (e) Bank's Service level goals.
3. **Re-association Service.** If Company enrolls in Bank's Re-association Service, Bank will accept a File containing remittance information from a trading partner of Company and attempt to re-associate payments the trading partner makes separately by ACH or wire transfer, provided the trading partner (a) sends the remittance information to Bank in advance of the payment and (b) includes an originating company ID and a transaction reference number with both the remittance information and the associated payment.
4. **Company's Receipt of Files; Acknowledgments.** Bank will not monitor Files transmitted to Company through the Service including without limitation any acknowledgment Company's system may generate upon its receipt of a File. If Company does not receive a File when it expects to, Company will notify Bank. If Company requests Bank resend a File within fourteen days after Bank initially transmits the File to Company, Bank will attempt to honor such request but will have no liability for not doing so.
5. **Incorrect, Incorrectly Formatted Information.** Bank is not responsible for the accuracy of and will not verify remittance information it receives from Company's trading partners and provides to Company through the Service.



WELLS FARGO REMOTE DEPOSIT CAPTURE SERVICE DESCRIPTION

(Wells Fargo Electronic Depositsm, Desktop Deposit[®],
Remote Deposit Capture)

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Remote Deposit Capture services (each, a "Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance") between Company and Bank, and "Company" is identified in the Acceptance.
2. **Description of Service.** The Service enables Company to create electronic images of certain Paper Items and transmit those images and other information including without limitation MICR data in an electronic file ("Electronic File") to Bank for review and processing for credit to Company's deposit account at Bank ("Account") in accordance with this Service Description. "Paper Item" is defined in Bank's Commercial Account Agreement, and an "Electronic Item" is the electronic image of the front and back of each Paper Item and other information captured from the Paper Item (and will be deemed to be an "item" for purposes of the Uniform Commercial Code). For each Electronic Item Bank determines is eligible for processing (see section 4), Bank will:
 - 2.1. create a substitute check as defined in Bank's Commercial Account Agreement that Bank will present directly or indirectly to the bank (a) on which the original Paper Item to which the Electronic Item relates is drawn, or (b) at or through which the Paper Item is payable (each, the "Paying Bank");
 - 2.2. include the Electronic Item in an electronic file for presentment directly or indirectly to the Paying Bank; or
 - 2.3. post any Electronic Item for which Bank is the Paying Bank.
3. **Creating Electronic Items and Transmitting Company's Electronic File to Bank.** To create Electronic Items and transmit Company's Electronic File to Bank, Company will use either (a) Bank provided software and Bank provided, certified or approved hardware, or (b) Company's software and hardware or third party provided software and hardware, provided each generates Electronic Items and Electronic Files that meet Bank's then current standards and specifications. Any third party processor Company uses to prepare and/or transmit Company's Electronic File is Company's agent, and Company will be responsible for ensuring its agent complies with Company's responsibilities under this Service Description. In particular, each Electronic File Company's agent transmits to Bank will include only Electronic Items payable or endorsed to Company, unless Bank consents in writing to permit Company's agent to include Electronic Items payable to multiple customers of Bank.

4. **Processing Company's Electronic File.** Bank will review each Electronic Item and process the Electronic Items Bank determines are eligible for processing on the Business Day Company transmits Company's Electronic File to Bank, if Bank receives Company's Electronic File before the processing deadline Bank separately discloses to Company ("Cut-Off Time") on that Business Day and on the next Business Day if Company transmits Company's Electronic File to Bank after Bank's Cut-Off Time. "Business Day" is defined in Bank's Commercial Account Agreement.
5. **Exception Items.** Each Business Day on which Bank processes Company's Electronic File, Bank may, without liability to Company, reject Electronic Items Bank determines are ineligible for the Service (each, an "Exception Item"). "Exception Item" includes without limitation an Electronic Item that (a) is illegible or contains MICR data that is not machine-readable, (b) was previously processed as an Electronic Item, or (c) is drawn on a bank located outside the United States and is not payable at or through a bank located within the United States. Bank will notify Company of each Exception Item through Bank's *Commercial Electronic Office*[®] service or other communication channel at Bank's discretion. Company will deposit an Exception Item to Company's Account only by depositing the original Paper Item to which the Exception Item relates or as otherwise agreed by Bank and Company. Even if Bank does not identify an Exception Item when Bank processes the Electronic File that includes the Exception Item, the substitute check or purported substitute check Bank creates from the Electronic Item may be returned to Bank because, among other reasons, the Paying Bank determines it is illegible or missing an image. ~~Bank's failure to identify an Exception Item will not limit Company's obligations to Bank under section 9.~~
6. **Deposits to Company's Account.** Bank will be deemed to have accepted each Electronic Item for deposit to Company's Account (other than any Exception Item)) (a) on the Business Day Bank processes the Electronic Item (b) at the Bank office where Company's Account is maintained. Funds from these Electronic Items will be made available in accordance with Bank's Funds Availability Policy applicable to Company's Account deemed to be collected in accordance with Bank's Electronic Deposit Collected Funds Schedule which Bank will provide to Company upon request and may amend from time to time.
7. **Third-Party Senders.** This section contains additional terms applicable when Company uses the Service to create and process Electronic Items on behalf of its customers. Prior to creating an Electronic Item on behalf of its customer, Company will (a) provide Bank with the information Bank requires to enable Bank to understand the nature of the customer's business including without limitation its name, Taxpayer Identification Number, business activity and geographic location; (b) if expressly required by Bank, obtain Bank's written approval to use the Service for that customer, which approval Bank may withdraw upon written notice to Company; and (c) enter into a written agreement with that customer in which the customer (i) agrees to grant Bank ongoing access to audit its processes and activities relating to remote deposit capture and (ii) acknowledges Bank may at any time refuse to process Electronic Items for that customer.
8. **Company's Representations and Warranties.** Company represents and warrants to Bank Company will:
 - 8.1. use the Service only for Paper Items payable to or endorsed for deposit by Company;
 - 8.2. transmit to Bank only Electronic Items suitable for processing including without limitation legible Electronic Items containing machine-readable MICR data;

- 8.3. not transmit to Bank any Electronic Item that duplicates an Electronic Item previously transmitted to Bank or that did not originate as a Paper Item;
- 8.4. maintain control over and sole responsibility for secure retention and destruction of each original Paper Item for which Company has created an Electronic Item (including the security and integrity of nonpublic personal information appearing on the original Paper Item throughout the transmission flow and while in storage) and properly secure all hardware Company uses in connection with the Service at all times;
- 8.5. not transmit to Bank, deposit to Company's Account, or otherwise negotiate any original Paper Item with respect to which Company has transmitted an Electronic Item to Bank, unless Bank has notified Company that the Electronic Item is an Exception Item; and
- 8.6. If Company uses an agent to create Electronic Items and/or transmit Company's Electronic File to Bank, Company will ensure its agent includes in each Electronic File Bank Electronic Items payable only to Company, unless Bank consents in writing to permit the agent to include Electronic Items payable to multiple customers of Bank.
- 8.7. If Company uses the Service to create and process Electronic Items on behalf of its customers, Company (a) has conducted due diligence with respect to each customer and determined that each such customer is engaged in a legitimate business and that the size and frequency of the customer's deposits are normal and expected for the customer's type of business; and (b) will, in accordance with reasonable commercial standards, monitor each customer's business and deposits on an ongoing basis and notify Bank immediately if Company identifies any unusual activity by any customer of Company.

9. Company's Agreement to Indemnify Bank. Company will indemnify, defend, and save harmless Bank, its parent company, and its affiliates and each of their respective directors, officers, employees, and agents (collectively in this section 9, "Indemnitees") from and against all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to:

- 9.1. Any negligent or intentional act or omission by Company in the performance of its obligations under this Service Description including without limitation failing to maintain control over and sole responsibility for secure retention and destruction of each original Paper Item for which Company has created an Electronic Item (including the security and integrity of nonpublic personal information appearing on the original Paper Item throughout the transmission flow and while in storage), in which event Losses and Liabilities will include without limitation consequential damages;
- 9.2. Any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description;
- 9.3. Bank acting as a "reconverting bank" under the Check Clearing for the 21st Century Act through the creation of "substitute checks" or purported substitute checks using an Electronic Item, an Exception Item or an Electronic File, in which event Losses and Liabilities will include without limitation consequential damages; and
- 9.4. Bank presenting an Electronic Item to the Paying Bank for payment.

10. **Termination.** In addition to its rights to discontinue providing Services under the Master Agreement, Bank may discontinue providing the Service to Company immediately upon notice if Bank determines in its sole discretion that Company has breached any of Company's obligations under sections 8 or 9 of this Service Description.
11. **Bank's Authority Under FIL-4-2009.** In FIL-4-2009, Risk Management of Remote Deposit Capture ("RDC") Guidelines, the FFIEC sets forth guidelines for agreements with RDC customers. In accordance with these guidelines, Bank has the authority upon reasonable prior notice to (a) mandate specific internal controls at Company's locations, (b) periodically audit or require audits of Company's RDC operations including Company's IT infrastructure at Company's expense, and (c) request additional information about Company.
12. **Survival.** Sections 8 ~~and 9~~ of this Service Description will survive termination of the Service.

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RETAIL IMAGE LOCKBOX SERVICE DESCRIPTION

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1. **Introduction.** This Service Description is part of the applicable documentation ("Service Documentation") governing the Wells Fargo Bank, N.A. ("Bank") Retail Image Lockbox service ("Service"). For treasury management relationships governed by Bank's Master Agreement for Treasury Management Services, the Service Documentation includes the Acceptance of Services, and "Company" is the company identified in the Acceptance of Services. For treasury management relationships governed by Bank's Deposit Agreement and Disclosures for Commercial Accounts, the Service Documentation includes the related Depository Authorization & Agreement Certificate and/or Signature Card, as applicable (each an "Authorization Certificate"), and "Company" is the company identified in the Authorization Certificate. As used in this Service Description, the term "Master Agreement" refers to either Bank's Master Agreement for Treasury Management Services or Bank's Deposit Agreement and Disclosures for Commercial Accounts, as applicable.
2. **Scope of Service.** The Service covers the processing of (i) checks and other instruments submitted in payment of obligations to Company ("Remittances") and (ii) written authorizations to charge payments due Company to the payors' credit cards ("Charge Authorizations"). However, processing of Charge Authorizations is not available at all processing sites. To the extent Company is not using the Service to process Charge Authorizations, the references to Charge Authorizations throughout this Service Description will not apply to Company.
3. **Commencement of Service.** The Service will start on the date separately agreed to by Bank and Company if the following events have occurred before such date:
 - 3.1. The United States Postal Service has assigned the Lockbox (as defined in Section 4 below) to Company with the number and at the address specified by Bank to Company;
 - 3.2. The Account (as defined in Section 6 below) has been opened and is in good standing;
 - 3.3. Company has designated to Bank in writing the processing options selected by Company for the Service; and
 - 3.4. Company has provided to Bank such other information and documents as Bank requests to enable Bank to commence and operate the Service for Company and to enable Bank to comply with its other obligations under this Service Description.
4. **Lockbox.** Company will direct its customers to mail Remittances and (if applicable) Charge Authorizations to the post office box identified in the Lockbox Service Set-up Form, or otherwise identified in writing to Company (the "Lockbox"). Bank (including any subcontractor of Bank) will have exclusive access to the Lockbox. Bank will give appropriate instructions concerning the Lockbox to the United States Post Office where the Lockbox is located.
5. **Processing Lockbox Mail.** Each Business Day (a day on which Bank is open to conduct its regular banking business, other than a Saturday, Sunday or public holiday), Bank or its subcontractor will pick up at, and transport from, the Lockbox to the processing site or sites designated by Bank (each a "Processing Site") the Remittances and Charge Authorizations addressed to the Lockbox. Except as otherwise specifically provided in this Service

Description, Bank or its subcontractor will open the Remittances and Charge Authorizations and process them in accordance with the lockbox processing procedures set forth in this Section 5 (the "Processing Procedures"). Company agrees to instruct its customers and other obligors not to send cash to the Lockbox.

- 5.1. Disposition of Remittance Materials.** On each day Bank offers the Service, Bank will collect from the Lockbox the envelopes and other contents of the Lockbox. Bank will open the envelopes and determine whether they contain any Charge Authorizations, Remittances, remittance statements, invoices, correspondence, checks, cash, papers, documents, or other items. Unless otherwise requested by Company (the business entity receiving the Service) and agreed to by Bank, if cash is sent with any remittance materials the cash will be removed from the envelope containing the remittance materials and a credit advice of the amount of the cash will be placed in such envelope with the remainder of the envelope's contents. Except as otherwise specifically provided in these Processing Procedures or elsewhere in this Service Description, or as specifically requested by Company and agreed to by Bank, Bank will not reconcile the Charge Authorizations, checks, cash or other items in the envelopes to invoices, to remittance statements, or to any other documents or papers in the envelopes or elsewhere. Bank will process any checks, instruments, Charge Authorizations and any cash in the envelopes by automated means, unless an envelope does not contain a remittance statement or invoice or coupon, in which case the checks or cash will be processed manually (a "Manually Processed Check"), as otherwise provided in these Processing Procedures and, if so provided in these Processing Procedures, deposit such checks and cash in the Account.
- 5.2. Document Identification, Imaging, and Data Capture.** Bank or its subcontractor will (i) print an audit trail identification number on each of the remittance documents that it processes, (ii) image all checks, Charge Authorizations, remittance stubs and correspondence included among the remittance materials, and (iii) electronically capture OCR data from remittance documents, such as account number and amount due.
- 5.3. Checks Deposited under Automated Processing.** Unless Company gives Bank timely instructions to the contrary using the Retail Lockbox Client Decision Module available through Bank, with regard to a particular check, each check processed under automated check processing procedures will be deposited as provided in Section 5.6 of these Processing Procedures even if (i) the numerical and written amounts of the check are not the same, (ii) the numerical and written amounts on the check do not correspond to the amount on any invoice or remittance statement sent with the check, (iii) there is no payee on the check, (iv) the check is postdated or staledated, (v) the drawer of the check cannot be determined, (vi) the check does not have a date or a signature, or (vii) the check contains alterations or restrictive notations.
- 5.4. Handling of Rejected Checks.** Bank will evaluate each check or remittance document which it could not initially process electronically, and if Bank determines, in its sole discretion, that such check or remittance document can reasonably be corrected, repaired or otherwise processed, Bank will attempt to correct, repair, or complete the processing of such check or remittance document. If Company has requested special handling of rejected checks, Bank will process such checks manually in accordance with Company's written instructions to Bank; provided, however, that Bank will not deposit a rejected check listed in an electronic stop payment file which Bank has received from Company in accordance with Bank's specifications for such files.

- 5.5. **Restrictive Notations.** Bank will not inspect checks, whether processed by automated means or processed manually, to determine whether they bear restrictive notations, such as "Paid in Full". ~~Bank will have no liability whatsoever, despite anything to the contrary in this Service Description, for depositing or otherwise handling any check bearing a restrictive notation in accordance with these Processing Procedures, regardless of whether Bank has knowledge of such restrictive notation.~~ [Handwritten initials]
- 5.6. **Deposits of Checks and Cash.** During each Business Day, Bank will make deposits of the acceptable checks and cash received in the Lockbox by crediting the Account for the amount of such checks and cash. If a check is processed by automated means, Bank or its subcontractor will capture the information on the scan line on the remittance statement or invoice or coupon accompanying the check and transmit such information to Company electronically on a daily basis. Company will determine what information is placed on the scan line of Company's remittance statements, invoices or coupons. If the check is a Manually Processed Check, Bank will manually enter into its database the account number and amount of the check and transmit such information to Company electronically on a daily basis. Except as otherwise specifically provided in this Service Description, the normal and customary laws, rules, practices and procedures for handling deposits to checking accounts will apply to these Processing Procedures and the Service.
- 5.7. **Eligibility Requirements for Processing Charge Authorizations.** In order to be eligible for processing by Bank, a Charge Authorization received in the Lockbox must contain the name of the account debtor, the account debtor's credit card number, the expiration date, the three digit security code, and the amount of the payment authorized, all of which must be written or imprinted on the authorization form in a reasonably legible manner. If any one of these items of information is missing from a Credit Card Charge Authorization, or is, in the sole judgement of Bank or its subcontractor, not sufficiently legible for processing purposes, the Credit Card Charge Authorization will not be processed, and will be forwarded to Company as set forth below.
- 5.8. **Processing Charge Authorizations for Approval.** Bank will proceed to process for approval each Charge Authorization received in the Lockbox which contains the information required in Section 5.7 above and is otherwise eligible for processing. Bank will seek approval from the issuer of the applicable credit card for the payment transaction set forth on the Charge Authorization. Bank will submit for settlement each Charge Authorization approved in this manner.
- 5.9. **Settlement Report for Charge Authorizations.** Following processing of Charge Authorizations for approval, Bank will segregate those Charge Authorizations which are approved from those Charge Authorizations which are declined. Bank will generate a settlement report for all approved Charge Authorizations and will make it available to Company in the manner mutually agreed upon during implementation of the Service.
- 5.10. **Imaging.** Bank or its subcontractor will electronically image checks, Charge Authorizations, remittance stubs and correspondence received in the Lockbox. Company acknowledges and agrees that the images are not works made for hire and are the property of Bank and not of Company.
- 5.11. **Transmission of Information from Processed Remittances.** Each Business Day that Bank offers the Service, Bank will electronically transmit to Company, in

accordance with the transmission method and file format agreed upon between Bank and Company, information from processed remittances, including credit card transaction data, and each settlement report applicable to approved Charge Authorizations.

5.12. Mailing Checks to Company. Unless otherwise specified by Company in writing to Bank, Bank will mail to Company, in accordance with the terms of this Service Description, any checks enclosed in an envelope with remittance materials which are not deposited in accordance with these Processing Procedures.

6. Account. Company will maintain a deposit account with Bank, which Company will designate in the Lockbox Service Set-up Form or otherwise in writing, to which Bank or its subcontractor will (i) deposit Remittances received through the Lockbox, and (ii) credit amounts attributable to settlement of Charge Authorizations received through the Lockbox, throughout the term of the Service (the "Account"). Company understands that this Service Description covers the lockbox service to be provided by Bank and, except as specifically provided in this Service Description, does not cover the handling of the Account or the processing of checks drawn on the Account. Except as otherwise specifically provided in this Service Description, the Account will be handled and checks drawn on the Account will be processed by Bank as Bank would perform such responsibilities with respect to any other demand deposit account at Bank. As a result, the Account will be subject to, and Bank's operation of the Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Account (the "Account Agreement"), a copy of which Company acknowledges having received.

7. Deposits and Confirmations. Company authorizes Bank to endorse checks and other payment instruments received at the Lockbox, and to deposit them into the Account as provided in the Processing Procedures. If any payee of a check or other payment instrument received in the Lockbox is a legal entity other than Company, Company represents ~~and warrants~~ ^{MAJ} to Bank that Company has the proper authorization from the payee to have the check endorsed for deposit, and deposited, into the Account, ~~and Company agrees to indemnify Bank against any losses, liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees (collectively, "Losses and Liabilities") suffered or incurred by Bank as a result of, or in connection with, Company's failure to have proper authorization.~~ ^{MAJ} Company also authorizes Bank to process and settle Charge Authorizations received at the Lockbox, and to cause the amounts received on account of settlements of such Charge Authorizations to be credited to the Account as provided in the Processing Procedures. Bank will provide to Company an advice of deposits and other credits made to the Account. Company agrees to notify Bank's customer service center, whose address and telephone number is available upon request from Bank, (i) of any error in an advice of deposit within fourteen (14) calendar days after Company receives such advice of deposit and (ii) of any error in a bank statement, or of any failure of a bank statement to show a deposit that should have been made during the period covered by the statement, within thirty (30) calendar days after Company receives such bank statement. ~~The liability of Bank for such errors is limited as provided in Section 17 of this Service Description.~~ ^{MAJ}

8. Accounts Receivable Conversion. If Company utilizes Bank's *Smart Decision*[®] service or another method of accounts receivable conversion offered by Bank, Bank or its subcontractor will, on each Business Day, create an "Electronic File" that includes electronic images of Remittances that are received in the Lockbox (each, an "Electronic Image") and other information regarding Remittances, and will process the Electronic File and Remittances according to the processing criteria Bank has on file for Company, the issuer of an Electronic Image or Remittance, and Bank (each, respectively, a "Company Preference," "Issuer

Preference," or "Bank Preference.") Based on these Preferences, Bank will (a) convert each eligible Electronic Image and Remittance to an ACH debit entry on the deposit account on which it was drawn, in which case the conversion and processing of such ACH debit entry will be governed by and subject to Bank's separate ACH Origination Service Description, including, without limitation, the indemnity provisions thereunder; (b) process remaining Electronic Images in accordance with Bank's separate Service Documentation, as selected by Company for non-eligible Electronic Images and Items; or (c) process remaining Items in accordance with Bank's Commercial Account Agreement or other applicable deposit account agreement. If a Company Preference or an Issuer Preference conflicts with a Bank Preference, with respect to an Electronic Image or an Item, Bank will process the Electronic Image or Item in accordance with the Bank Preference.

9. **Access to Lockbox Images.** The Service will allow Company to enter a website hosted by Bank or its subcontractor (the "Website") for the purpose of accessing archival images of Charge Authorizations, Remittances and other remittance materials processed through the Lockbox, and giving Bank or its subcontractor certain types of instructions with regard to the processing of such remittance materials. Company agrees to use the Website only in accordance with this Service Description and any notices and information posted on the Website (collectively, the "Website Use Documentation"). Persons entering the Website for Company (the "Users") must also accept any "terms of use" for the Website which appear on the Website when a User initially logs on.
10. **Security Procedures.**
 - 10.1. Bank or its subcontractor will provide each User with a multi-factor authentication compliant access method (which may consist of a combination of user names, passwords, passphrases, digital certificates and/or tokens) to be used whenever the User enters the Website.
 - 10.2. It is Company's responsibility to ensure that any user names, passwords, passphrases, digital certificates and tokens provided in connection with use of the Website (collectively, "Security Devices") are known to, and used only by, persons who have been properly authorized by Company to access the Website and use the Service through the Website.
 - 10.3. FAILURE TO PROTECT SECURITY DEVICES MAY ALLOW AN UNAUTHORIZED PARTY TO (1) USE THE SERVICE, (2) CORRECT, CHANGE, VERIFY, OR SEND DATA USED WITH THE SERVICE, (3) SEND INFORMATION AND COMMUNICATIONS TO, OR RECEIVE INFORMATION AND COMMUNICATIONS FROM, BANK OR (4) ACCESS COMPANY'S ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA. ALL ENTRIES INTO THE WEBSITE, ALL COMMUNICATIONS SENT, AND ALL USES OF THE SERVICES, THROUGH COMPANY'S SECURITY DEVICES WILL BE DEEMED TO BE ENTRIES, USES, AND COMMUNICATIONS AUTHORIZED BY COMPANY AND SHALL BE BINDING UPON COMPANY. ~~COMPANY ASSUMES THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF ALL SECURITY DEVICES.~~ Company acknowledges the importance of developing internal procedures to limit such risk, which procedures will include, at a minimum, (a) notifying Bank immediately when any new person becomes a User or when any existing User stops being a User, (b) disabling access to the Website immediately for each User who stops being a User, and (c) not keeping, in any form or in any place, lists of Security Devices. MWS
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10.4. Company agrees to notify Bank immediately when Company becomes aware of any loss or theft of, or any unauthorized use of, any Security Device. Company also agrees to notify Bank immediately when Company becomes aware of any unauthorized entry into the Website.

11. **Use of Certain Software to Access the Website.** In using the Website, Company will be sending financial and other data as well as electronic messages directly to Bank or Bank's subcontractor through the Internet. Company acknowledges that when the Internet, or other electronic communications facilities, are used to transmit or receive data and messages, the data and the messages may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, Company agrees to transmit and receive data and messages through the Website using only software, including, but not limited to, browser software, or other access devices that support the Secure Socket Layer (SSL) protocol or other protocols required by, or acceptable to, Bank, and to follow the log-on procedures established by Bank or its subcontractor that support such protocols.

12. **Restricting or Terminating Access to the Website.** In addition to, and not in substitution for, any provision in this Service Description or the other Service Documentation, Company understands and agrees neither Bank nor its subcontractor will in any way be obligated to permit Users access to the Service through the Website if (a) such use or access is inconsistent with any term or condition applicable to the Service or the Website or to the information to be accessed, (b) such use or access is not permitted by applicable state or federal law or regulation, (c) Bank has reasonable cause to believe that such use or access may not be authorized by Company or any third person whose authorization Bank believes is necessary for such use or access, or (d) Bank has reasonable cause to deny such use or access for Company's protection or the protection of Bank or Bank's subcontractor. If the Service cannot be used through the Website, Bank will make reasonable efforts for the Service to be used by other means. ~~Neither Bank nor its subcontractor shall have any liability to Company for any losses or damages Company may suffer or incur as a result of any such termination.~~

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13. **Decisioning Module.** If Bank's decisioning module is available to Company, and Company elects to it in connection with the Service, Company will be able to send instructions through the Website to Bank or its subcontractor as to how to process certain Remittances or Charge Authorizations which Bank classifies as either "processable suspend" or "unprocessable" (collectively, the "Unprocessable Items"). Company will have several options for instructions, as agreed upon in advance by Bank and Company. Such options may include one or more of the following: (i) apply the Unprocessable Item to a specific customer account, (ii) apply the Unprocessable Item to Company's suspense account, (iii) reject the Unprocessable Item and have it placed in Company's reject package, or (iv) direct Bank to issue a letter of pre-arranged content to the remitter of the Unprocessable Item. Each message related to the processing of an Unprocessable Item (a "Decisioning Instruction") must be received by Bank or its subcontractor by the cutoff time for deposit or processing of such item ~~which Bank and Company have mutually agreed upon during implementation of the Service.~~ If no Decisioning Instruction is received by the specified deadline, the Unprocessable Item will be handled in accordance with the Processing Procedures or any other standing instructions applicable such items. ~~Bank will have no liability or responsibility whatsoever for any keying errors, Company system issues, or misapplied payments resulting from Company's Decisioning Instructions.~~

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Established in Exhibit D to Fiscal Management Agreement

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14. **Customer Service.** Any questions or problems that Company has with respect to the Service should be addressed to Bank's customer service center at the telephone number and address separately disclosed to Company.

15. **Claims, Legal Progress and Notices.** If Bank receives any claim, notice, legal process or court order relating to the Charge Authorizations, the Remittances, the Lockbox or the Account, Bank will comply with it if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.

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16. **Indemnification.** Company agrees to indemnify Bank and its officers, directors, employees, agents and subcontractors (collectively, "Indemnified Parties") and hold each of the Indemnified Parties harmless from and against any and all losses, liabilities, claims, damages, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees (collectively, "Losses and Liabilities") which any one or more of the Indemnified Parties suffers or incurs in relation to (i) the processing of Charge Authorizations, (ii) any keying errors, Company system issues, or misapplied payments resulting from Company's Decisioning Instructions, or (iii) any action taken by Bank or its subcontractor in response to a Decisioning Instruction, except to the extent that any such Losses and Liabilities are directly caused by Bank's gross negligence or willful misconduct.

17. **Limitation of Liability.** Company understands and agrees that, absent manifest evidence of fraud, Bank is entitled to assume that each Charge Authorization received at the Lockbox is legitimate and duly authorized by the account debtor purporting on its face to give the Charge Authorization, and Bank will have no liability for processing such Authorization in accordance with the Processing Procedures. In addition to the other limitations on Bank's liability contained in the Master Agreement, if Company incurs a material loss which results directly from Bank's or its subcontractor's negligence or breach in performing the Service and (i) if such negligence or breach is a failure to deposit any check which should have been deposited or to process any Charge Authorization which should have been processed, pursuant to this Service Description, the liability of Bank and its subcontractor shall be limited to direct money damages in an amount not to exceed interest on the amount of the check or the amount of the payment authorized under the Charge Authorization at a rate equal to the cost of funds (at a reserve adjusted daily interest rate which Bank will determine in good faith) for the time period such amount is not in the Account, which time period for the purpose of calculating the interest will not extend beyond the end of the thirty (30) calendar day notice period referred to in Section 7 of this Service Description, and (ii) if such negligence or breach results from any other action or failure to act by Bank or its subcontractor, the liability of Bank and its subcontractor shall, unless otherwise provided by any law which cannot be varied by contract, be limited to direct money damages in an amount not to exceed the lesser of (A) three (3) times all the Service Fees charged or incurred in relation to the Service during the calendar month immediately preceding the calendar month in which the loss occurred (or, if no such fees were charged or incurred in the preceding month, such fees charged or incurred in the month in which the loss occurred), or (B) Two Hundred Thousand Dollars (\$200,000.00).

18. **Termination.** Upon termination of the Service, Bank will (i) close the Lockbox, and (ii) dispose of the mail addressed to the Lockbox in the manner instructed by Company for a period of three (3) months after the termination date, unless arranged otherwise between Company and Bank, with Service Fees with respect to such disposition based on Bank's estimate being prepaid directly to Bank at the time of such termination in immediately available funds or by another payment method acceptable to Bank in its sole discretion.

19. **Assignment.** Notwithstanding anything to the contrary in the Agreement, the rights and obligations of Bank with respect to the Service shall be assignable to any successor in interest without restriction.

20. **Instructions.** Bank is authorized to act on any instructions received by Bank if (i) such instructions purport to be made in the name of Company, (ii) Bank reasonably believes that

they are so made, and (iii) they do not conflict with the terms of this Service Description, including, but not limited to, the Processing Procedures, as such terms may be amended from time to time, unless the conflicting instructions are supported by a court order.

21. **Authorized Persons.** Any person identified by Company in the Lockbox Service Set-up Form or any certification, notice or other communication delivered to Bank may receive information, communications and notices regarding the Service, and is authorized to transact all business, make all agreements and sign and deliver all documents in connection with the Service. If the identity of such a person changes Company will promptly notify Bank in writing. Bank will have a reasonable time after receipt of a certification, notice or other communication to act on it.
22. **Software, Hardware and Backup Requirements.** Upon notice from Bank of a failure of any software, hardware or other equipment necessary for Bank to perform in accordance with this Service Description, Company will as soon as reasonably possible deliver to Bank all data in Company's possession or under its control which Bank reasonably requests in order for Bank to continue to provide the Service.
23. **Survival.** Sections 7, 8, 10, 12, ~~16, 17~~ and 23 of this Service Description will survive termination of the Service. *MT SR*
24. **Terminology.** As used in this Service Description and in the Agreement as applied to this Service, "negligence" will mean a material failure to use that degree of care that would be used under the same or similar circumstances by a national banking association having substantially the same volume and type of lockbox activity and approximately the same number, size and diversity of lockbox customers.

WELLS FARGO RETURNED ITEM SERVICES SERVICE DESCRIPTION



1. **Introduction.** This Returned Item Services Service Description ("Service Description") and the other Service Documentation as defined in the Master Agreement for Treasury Management Services between Wells Fargo Bank, N.A. ("Bank"), and the company identified in the Acceptance of Services ("Company") between Bank and Company govern Bank's Returned Item Services (each, a "Service").
2. **Description of Bank's Returned Items Services.** Bank's Returned Item Services enable Company to have Bank (a) act as Company's returned Item processor with respect to Items payable to Company that are presented to Bank or another financial institution for payment and returned to Bank unpaid (each, a "Returned Item") in accordance with Company's Special Instructions to Bank for Returned Items ("Special Instructions") and (b) originate debits, and report and process credits received, for Company's returned check fee ("Returned Item Service Fee Recovery"). Company shall communicate its Special Instructions regarding Company's Returned Items to Bank, and Bank shall communicate to Company regarding the Services, using the media, format and communication channel(s) to which Company and Bank agree.

established in Exhibit C to the Fiscal Agent agreement, the bank's Fee 3. Schedule.
- Conditions to Provision of Bank's Service.** As conditions to Bank's provision of the Services, Company shall at all times (a) maintain Company's demand deposit account(s) at Bank (each, an "Account") in good standing; (b) subscribe to Bank's *Commercial Electronic Office*® ("CEO®") Service; and (c) comply with all Rules Applicable to Bank's Returned Item Services as set forth in this Service Description.
4. **Rules Applicable to Bank's Returned Item Services.** Bank will provide its Services to Company in accordance with
 - 4.1. the Service Documentation including without limitation the User Guide that Bank makes available to Company at www.wellsfargo.com; and
 - 4.2. State and federal laws and regulations and clearinghouse rules applicable to a Returned Item which may include Federal Reserve Board Regulation CC Subpart C relating to the collection of checks ("Reg CC"), Federal Reserve Board Regulation E ("Reg E") and, in the case of Bank's Returned Item Service Fee Recovery Service when Bank originates an ACH entry on Company's behalf, the National Automated Clearinghouse Association Operating Rules, as supplemented by any applicable operating rules of any automated clearing house of which Bank is a member (together, the "NACHA Rules"), all as amended from time to time.
5. **Special Instructions.** Bank will process Company's Returned Items in accordance with Company's Special Instructions, unless Bank determines in Bank's sole discretion that doing so with respect to a Returned Item would prevent Bank from effectively providing Bank's Service to Company.
6. **Bank's Right to Chargeback Returned Items.** Bank may chargeback a Returned Item to any account Company owns in whole or in part at Bank or any affiliate of Bank without

regard to whether the returned Item was initially deposited to Company's Account or to an account at another financial institution.

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~~7. **Returned Item Service Fee Recovery.** Bank determines the state whose laws establish the maximum returned check fee that Company may assess a customer who issues a Returned Item to Company based on information about Company's retail locations that Company provides to Bank when Company subscribes to this Service and upon any subsequent changes in Company's retail locations. If Company fails to provide information to Bank regarding a location in a timely fashion, Bank will assess the lowest maximum fee permitted in the states for which Company has provided location information.~~

8. **ACH Entries.**

8.1. **Payment Obligations; Settlement; Returned Debit Entries.** In the case of Services for which Bank originates ACH debit entries on Company's behalf, each credit to Company's Account will be made on the applicable settlement date. Bank may charge Company's Account for any debit, correcting or reversing entry which is later returned to Bank. Company authorizes Bank upon prior oral or written notice to Company to place a hold on an equal amount of funds in Company's Account or to take any other action Bank deems appropriate to ensure Bank receives payment for any debit, correcting or reversing entry which is later returned to Bank.

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~~8.2 **Reimbursement.** Company will reimburse Bank for any loss or expense Bank incurs, including reasonable attorney's fees and legal expenses, as the result of (a) a breach of any warranty Bank makes under the NACHA Rules in connection with providing the Services to Company, (b) a breach of any representation or warranty that Company makes in this Service Description, or (c) an action Company asks Bank to take in connection with Bank's providing the Services to Company. Company authorizes Bank to recover any such amount by debit to any account Company owns in whole or in part at Bank or any affiliate of Bank.~~

9. **Company's Representations and Warranties.** Company represents and warrants Banking that:

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9.1. The information about Company's retail locations that Company provides to Bank in accordance with Section 7 of this Service Description is accurate.

9.2. Company has received and shall maintain current copies of the Rules Applicable to Services including without limitation Reg CC, Reg E and the NACHA Rules and is in compliance therewith.

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~~10. **Company's Agreement to Indemnify Bank.** Company shall indemnify, defend, and save harmless Bank, its parent company, and its affiliates and each of their respective directors, officers, employees, and agents (collectively in this Paragraph 10, "Indemnified Persons") from and against all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) (collectively, "Losses and Liabilities") awarded against or incurred or suffered by Indemnified Persons arising directly or indirectly from or related to the following:~~

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~~10.1. Any negligent or intentional act or omission by Company in the performance of its obligations under this Service Description and the other Service Documentation including without limitation Company's obligation to provide Bank with information about Company's locations.~~

~~10.2. Any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description and the other Service Documentation;~~

~~10.3. The violation of any applicable law, statute, or regulation or of the Rules Applicable to Bank's Returned Items Services including without limitation Reg CC, Reg E and the NACHA Rules in the performance of Company's obligations under this Service Description and the other Service Documentation; and~~

~~10.4. A breach of any warranty Bank makes under the NACHA Rules in connection with Bank's Services under this Service Description, any failure by Bank to assess the correct Returned Item Service fee based and any delay in the return of any Returned Item.~~

11. **Bank's Assessment of Services.** Company agrees Bank may at any time or times modify this Addendum with prior notice to Company, and the Addendum as modified shall supersede this Addendum and be binding upon Company.

12. **Survival.** Sections 6, ~~X~~, 8, 9, and ~~X~~ of this Service Description will survive termination of the Service.

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RETURNED ITEM DECISIONING SERVICE DESCRIPTION

This Service Description contains provisions which, in addition to the provisions contained in the Master Agreement for Treasury Management Services between Bank and Company (the "Agreement"), will govern the Returned Item Decisioning Service (the "Service").

- The Service.** Using the *Commercial Electronic Office*[®] (CEO[®]) portal, Bank will notify Company of returned items to its account(s) during the period specified by Bank on each Banking Day. Returned items will be listed by the default disposition (redeposit or chargeback) selected by Company. Company will review items and accept or change each item's disposition prior to the daily deadline specified by Bank. Returned items not accepted or changed by this deadline will be processed according to their default disposition.
- Requirement for Service.** Company shall have met requirements for receiving services offered through the CEO[®] portal, including the execution of any necessary documentation.

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WELLS FARGO STAGECOACH SWEEP[®] SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Stagecoach Sweep service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Service ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The Service enables Company to link each domestic demand deposit account Company enrolls in the Service ("Account") to (a) one of the non FDIC insured options described in Section 4 (each, an "Investment Sweep Option") or (b) Company's FDIC insured Money Market Savings Account ("Savings Account") as described in section 6. Company may also link Company's Account to Company's line of credit with Bank ("Credit Sweep Option"), as described in section 7. At the end of each Business Day, funds are transferred automatically or "swept" from the Account in accordance with Company's designation(s) in the Acceptance. The amount swept ("Transferable Balance") is the Collected Balance in the Account less the Target Collected Balance. The "Collected Balance" is the amount available for immediate withdrawal from the Account. The "Target Collected Balance" is the amount that Bank and Company have agreed will be maintained in the Account. A "Business Day" is every day except Saturdays, Sundays, federal holidays and days when the New York Stock Exchange is closed. Company may access its funds only through the Account(s) it has enrolled in the Service. Circumstances in which the entire Transferable Balance may not be invested are described in section 5. Important disclosures pertaining to the Investment Sweep Options are set forth in sections 8 through 12 and 14.
3. **Authorization.** Company appoints Bank as its agent to act with respect to the Service and the Investment Sweep Option Company has elected in the Acceptance.
4. **Investment Sweep Options.** Bank offers the following Investment Sweep Options, each of which is subject to section 5:
 - 4.1. **Wells Fargo Stagecoach Sweep Preferred Option.** The Transferable Balance that is (a) equal to or greater than \$100,000 will be swept to Bank's designated account at Bank's Cayman Islands Branch ("Offshore Account"), or (b) less than \$100,000 will remain in the Account and not earn interest. At the beginning of the next Business Day the entire amount held in Company's Investment Sweep Option, less any earnings, will be swept back to the Account.
 - 4.2. **Wells Fargo Stagecoach Sweep Preferred Option with secondary Wells Fargo Stagecoach Sweep Repurchase Agreement Option.** If the Transferable Balance is (a) equal to or greater than \$100,000, the entire amount will be swept to the Offshore Account, or (b) less than \$100,000, the entire amount will be swept to the *Wells Fargo Stagecoach Sweep, Repurchase Agreement* ("Repurchase Agreement") Option. Any portion of the Transferable Balance not swept to a Repurchase Agreement will remain in the Account and not earn interest. At the beginning of the next Business Day the entire amount held in Company's Investment Sweep Option, less any earnings, will be swept back to the Account.

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- 4.3. Wells Fargo Stagecoach Sweep Repurchase Agreement Option with secondary Wells Fargo Stagecoach Sweep Preferred Option.** The Transferable Balance will be swept to the *Wells Fargo Stagecoach Sweep Repurchase Agreement* ("Repurchase Agreement") Option. Any portion of the Transferable Balance which is not swept to a Repurchase Agreement will be swept to the Offshore Account, provided such portion is equal to or greater than \$100,000; otherwise such portion will remain in the Account and not earn interest. At the beginning of the next Business Day the entire amount held in Company's Investment Sweep Option, less any earnings, will be swept back to the Account.
- 4.4. Wells Fargo Stagecoach Sweep Repurchase Agreement Option.** The Transferable Balance will be swept to the *Wells Fargo Stagecoach Sweep Repurchase Agreement* ("Repurchase Agreement") Option. Any portion of the Transferable Balance not swept to a Repurchase Agreement will remain in the Account and not earn interest. At the beginning of the next Business Day the entire amount held in Company's Investment Sweep Option, less any earnings, will be swept back to the Account.
- 4.5. Wells Fargo Stagecoach Sweep, Money Market Mutual Fund ("MMMF") Option.** The Transferable Balance will be transferred to an omnibus deposit account at Bank. At the beginning of the next Business Day, the Transferable Balance will be transferred from the omnibus deposit account at Bank to an omnibus investment account in Bank's name at the custodian of the MMMF. MMMF shares belonging to multiple Bank customers are held in this investment account. Any portion of the Transferable Balance not swept to the MMMF will remain in the Account, and no dividends will accrue on it. If the Collected Balance in the Account on any Business Day is less than the Target Collected Balance, Bank will redeem a sufficient number of Company's MMMF shares, as determined on the Business Day following the Business Day on which this shortfall occurs, to restore the Collected Balance to the Target Collected Balance. Purchases and redemptions of MMMF shares in connection with this Investment Sweep Option may occur only through deposits to or withdrawals from the Account. This option is available only to entities having a United States presence, as demonstrated by a U.S. mailing address in Bank's records for Company.
- 4.6. Wells Fargo Stagecoach Sweep Commercial Paper Option.** The Transferable Balance will be invested in Wells Fargo & Company's commercial paper ("Commercial Paper") which will be payable to and held by Bank solely as agent for Stagecoach Sweep customers that have chosen Commercial Paper as their Investment Sweep Option. Any portion of the Transferable Balance not swept to Commercial Paper will remain in the Account and not earn interest. At the beginning of the next Business Day, the entire amount held in Company's Investment Sweep Option, less any earnings, will be swept back to the Account.
- 5. Maximum Investment Amount; Transferable Balance Not Invested; Earnings on Investment Sweep Option.**
- 5.1. Maximum Investment Amount.** If Company has designated a maximum amount for investment in Company's Investment Sweep Option ("Maximum Investment Amount"), then the maximum amount invested for Company on any given Business Day will equal the lesser of the Company's Transferable Balance or Maximum Investment Amount. Any portion of Company's Transferable Balance that is not invested pursuant to this section 5.1 will remain in the Account and not earn interest.

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5.2. Transferable Balance Not Invested. Bank will exercise reasonable efforts to invest the entire Transferable Balance but reserves the right to invest less when Bank determines in its sole discretion that the entire Transferable Balance exceeds the amount Bank is able to invest for Company in the ordinary course of business. Any Transferable Balance not invested pursuant to this section 5.2 will be held in accordance with Company's Investment Sweep Option.

5.3. Earnings on Company's Investment Sweep Option. Bank will handle any earnings on Company's Investment Sweep Option in accordance with Company's separate instructions to Bank.

6. Wells Fargo Money Market Savings Account Sweep Option. At the end of each Business Day, the Transferable Balance will be swept to the Company's Savings Account. If the Ledger Balance in the Account on any Business Day is negative, Bank will, up to five times per monthly statement period for the Savings Account, transfer collected funds from the Savings Account to the Account to restore the ledger balance in the Account to a positive status (or to the Target Collected Balance, if applicable). If the Ledger Balance in the Account is negative for a sixth time during the monthly statement period, Bank will transfer the entire collected balance in the Savings Account to the Account and initiate no more sweeps of the Transferable Balance to the Savings Account for the remainder of the monthly statement period.

7. Credit Sweep Option. At the end of each Business Day, the Transferable Balance will first be applied to the outstanding balance on the line of credit specified by Company in the Acceptance ("LOC"). Any remaining funds will then be deemed to be the Transferable Balance with respect to the Investment Sweep Option or MMS Account that Company may have also selected. If the Collected Balance is less than the Target Collected Balance, funds will be advanced from the LOC and credited to the Account. The application of payments to and advances from the LOC are governed by the documents governing the LOC as amended or replaced from time to time (collectively, "Loan Documentation"). Bank may terminate the Credit Sweep Option immediately without notice to Company if an event of default occurs under the Loan Documentation.

8. Disclosures Applicable To Each Investment Sweep Option.

NO EMPLOYEE OR AGENT OF BANK HAS BEEN AUTHORIZED TO PROVIDE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING A SWEEP OPTION OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THE SERVICE DOCUMENTATION AND IF SUCH INFORMATION IS PROVIDED OR SUCH A REPRESENTATION IS MADE, IT MAY NOT BE RELIED UPON AS BEING AUTHORIZED BY BANK.

9. Additional Disclosures Applicable to Wells Fargo Stagecoach Sweep Preferred Option.

FUNDS TRANSFERRED TO BANK'S OFFSHORE ACCOUNT ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION THE UNITED STATES GOVERNMENT OR ANY GOVERNMENT AGENCY; IN A LIQUIDATION HAVE LESSER PREFERENCE THAN DEPOSITS HELD IN THE UNITED STATES, AND ARE SUBJECT TO CROSS-BORDER RISKS.

9.1. General. Funds held in Bank's Offshore Account in accordance with the *Wells Fargo Stagecoach Sweep Preferred Option* in sections 4.1, 4.2 and 4.3 are denominated in United States Dollars and payable only at Bank's Cayman Islands Branch. This Branch is a foreign branch located in Grand Cayman, Cayman Islands, British West Indies. Funds in Bank's Offshore Account are subject to the laws of the Cayman Islands, including existing and future laws, regulations and governmental actions regarding

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exchange controls, assets seizures and other restrictions. Bank does not accept responsibility for any failure to make transfers with respect to funds held in Bank's Offshore Account as a result of exchange or other governmental controls or other extraordinary circumstances beyond Bank's reasonable control.

9.2. **Interest.** Funds in Bank's Offshore Account will bear interest at a variable rate determined by Bank from time to time in its sole discretion. Interest on funds in Bank's Offshore Account will be calculated on a simple basis and credited to the Account as agreed by Company and Bank. If Company has elected to be paid interest on a monthly basis, pending any such payment, Company's interest accrued each day from the Offshore Account will continue to accrue and compound on a daily basis. For advance information about the interest rate on any given Business Day, Company may contact its relationship manager at Bank.

9.3. **Statements.** Bank will make a periodic statement available to Company showing the Account balance for each day in, and the amount of interest earned for, the statement period. Additionally, Company may elect to receive a daily confirmation showing the Account balance and the amount of interest earned for the preceding day.

10. **Additional Disclosures Applicable to Wells Fargo Stagecoach Sweep Repurchase Agreement Option.**

INVESTMENTS IN REPURCHASE AGREEMENTS ARE NOT DEPOSITS, ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION AND ARE NOT GUARANTEED BY THE UNITED STATES GOVERNMENT OR ANY AGENCY OF IT, OR BY BANK, NOR IS BANK'S OBLIGATION TO REPURCHASE COMPANY'S FRACTIONAL INTEREST IN ANY SECURITIES ACQUIRED UNDER REPURCHASE AGREEMENTS.

THE MASTER REPURCHASE AGREEMENT CONTAINS SPECIFIC PROVISIONS AND ADDITIONAL DISCLOSURES. PLEASE READ IT CAREFULLY.

THE REPO SECURITIES MAY OR MAY NOT BE GUARANTEED BY THE UNITED STATES GOVERNMENT BUT ANY SUCH GUARANTY DOES NOT FLOW TO COMPANY. ALL SECURITIES CARRY INVESTMENT RISK AND MAY LOSE VALUE.

THE RATE OF RETURN ON THE REPURCHASE AGREEMENT INVESTMENT IS NOT THE SAME AS THE RATE OF RETURN ON THE UNDERLYING GOVERNMENT SECURITIES. GENERAL BANKING ASSETS MAY BE USED TO SATISFY BANK'S REPURCHASE OBLIGATIONS TO COMPANY.

10.1. **General.** If Company has elected an Investment Sweep Option that includes a Repurchase Agreement, then the Master Repurchase Agreement including Annex I between Company and Bank (collectively, "Master Repurchase Agreement") is part of the Service Documentation. If there is a conflict between a term in this Service Description and a term in the Master Repurchase Agreement, the term in this Service Description will control.

10.2. **Purchases and Sales.** In accordance with, and as more particularly described in, the Master Repurchase Agreement, and subject to the limitations described in section 10.3, Bank will sell to Company on each Business Day on which there is a Transferable Balance an interest ("Fractional Interest") in a pool of securities used by Bank as repurchase agreement collateral ("Repo Securities"), which will be described in a written confirmation to Company (see section 10.7).

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Subject to section 10.3 regarding purchase increments, the price of Company's Fractional Interest ("Purchase Price") will equal the Transferable Balance. The Fractional Interest equals a fraction having the Transferable Balance as its numerator and the market value of the Repo Securities owned by Bank on the purchase date as its denominator. On each Business Day following the sale to Company of a Fractional Interest, Bank will repurchase that Fractional Interest from Company at (a) the Purchase Price thereof, regardless of any fluctuation in the market value of the Repo Securities, payable immediately, plus (b) a rate of return equal to 1/360 of the Pricing Rate, payable at the time agreed by Company and Bank. The "Pricing Rate" is a variable rate determined by Bank from time to time in its sole discretion and will be reflected in the confirmation sent to Company. For advance information regarding the Pricing Rate on any given Business Day, Company may contact its relationship manager at Bank.

The Service will be governed by all applicable federal and state laws and regulations, including without limitation any requirements applicable to "public funds". Company represents and warrants to Bank that Company (i) is authorized pursuant to its governing documents and applicable law to enter into repurchase agreements; (ii) is authorized pursuant to its governing documents and applicable law to invest in the type of securities designated by Bank in connection with Company's repurchase agreement transactions; and (iii) has obtained all necessary approvals required by its governing documents and applicable law, including but not limited to resolutions of Company's governing body to enter into the Master Repurchase Agreement.

- 10.3. **Purchase Increments.** To avoid odd lot purchases of Repo Securities, Bank may require that Transferable Balances be used to purchase Company's Fractional Interest in increments of \$100 (with any unused Transferable Balance remaining in the Account).
- 10.4. **Holding of Securities.** Unless required by applicable law, Bank and its custodian will be permitted to hold, transfer and deliver Repo Securities by segregation in bulk together with other securities held for the benefit of other Bank customers pursuant to other repurchase agreements. On the date that Bank repurchases Company's Fractional Interest, any Repo Securities designated to Company as collateral will be released to Bank's account. Bank acts as Company's agent and in the event of default (i.e., Bank failure) Company has the right to direct Bank to sell the Repo Securities and apply the proceeds in satisfaction of Bank's obligations to Company under this Repurchase Option.
- 10.5. **Right of Substitution.** Bank will not have any right of substitution with respect to the Repo Securities.
- 10.6. **Margin.** Because all repurchase transactions under the Investment Sweep Option are overnight securities transactions backed by the federal government or federal agency securities in which Bank has an interest, Bank will not be required to maintain margin (instead, Company will have the security interest described in section 14.2). In addition, because Company will purchase its Fractional Interest from Bank using the Transferable Balance, and only if a Transferable Balance is available on any given Business Day to execute such transaction, Company will not be required to maintain margin.
- 10.7. **Pledge of Securities.** Although the Repo Securities may be guaranteed as to principal and interest by the federal government or by the issuing federal agency, any such guarantee runs only to Bank by virtue of its direct ownership of the Repo Securities and does not extend to Company as a Fractional Interest holder. To collateralize Bank's repurchase obligation, a security interest in certain Repo Securities is transferred to

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Company. This security interest is described in section 14.2. In addition, the market value of the Repo Securities may fluctuate rendering liquidation insufficient to fulfill the Bank's entire obligation to Company in a default situation. If the liquidation value of the Repo Securities is insufficient for full reimbursement, or if another creditor successfully claims rights to the securities, then Company will have to look to other assets of Bank as an unsecured general creditor for repayment of any uncovered portion of the repurchase obligation.

10.8. Confirmations and Statements. Bank will make a daily confirmation available to Company showing Company's principal sweep amount, purchase date, repurchase date, Fractional Interest, market price and the CUSIP number(s) of the Repo Securities, and accrued rate of return credited for the preceding Business Day. The confirmation, together with the Service Documentation, will constitute conclusive evidence of the terms agreed between Company and Bank with respect to the transaction to which the confirmation relates, unless with respect to the confirmation specific objection is made promptly after receipt thereof. In the event of a conflict between a term of the confirmation and the Service Documentation, the confirmation will control. Bank will also make a periodic statement available to Company showing the Account balance for each day in, and the amount of interest earned for, the statement period.

11. Additional Disclosures Applicable to Wells Fargo Stagecoach Sweep Money Market Mutual Fund Option.

MONEY MARKET MUTUAL FUNDS (EACH, A "MMMF") ARE NOT FDIC INSURED, HAVE NO BANK GUARANTY AND MAY LOSE VALUE.

AN INVESTMENT IN A MMMF IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY. ALTHOUGH THE MMMFs SEEK TO PRESERVE THE VALUE OF COMPANY'S INVESTMENT AT \$1.00 PER SHARE, IT IS POSSIBLE TO LOSE MONEY BY INVESTING IN A MMMF.

FOR MORE INFORMATION REGARDING WELLS FARGO ADVANTAGE FUNDS INCLUDING THE MMMF OPTION COMPANY SELECTED, OBTAIN A CURRENT PROSPECTUS BY CALLING 1-800-260-5969, OR BY VISITING . CONSIDER THE INVESTMENT OBJECTIVES, RISKS, CHARGES AND EXPENSES OF THE INVESTMENT CAREFULLY BEFORE INVESTING. THIS AND OTHER INFORMATION ABOUT WELLS FARGO ADVANTAGE FUNDS CAN BE FOUND IN A CURRENT PROSPECTUS. PLEASE READ IT CAREFULLY BEFORE INVESTING.

WELLS FARGO FUNDS MANAGEMENT, LLC, A WHOLLY OWNED SUBSIDIARY OF WELLS FARGO & COMPANY, PROVIDES INVESTMENT ADVISORY AND ADMINISTRATIVE SERVICES FOR WELLS FARGO ADVANTAGE FUNDS®. OTHER AFFILIATES OF WELLS FARGO & COMPANY PROVIDE SUB-ADVISORY AND OTHER SERVICES FOR THE FUNDS. THE FUNDS ARE DISTRIBUTED BY WELLS FARGO FUNDS DISTRIBUTOR, LLC, MEMBER FINRA/SIPC, AN AFFILIATE OF WELLS FARGO & COMPANY.

11.1. General. If Company has elected the MMMF Investment Sweep Option, then it acknowledges receiving a copy of the prospectus relating to MMMF shares that will be purchased using this Investment Sweep Option. This prospectus forms part of the Service Documentation and will control over the other Service Documentation with respect to the MMMF shares.

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11.2. Purchase of Shares. Bank will transfer funds to purchase shares of the MMMF at their net asset value ("NAV") as determined on the Business Day following the transfer of Company's Transferable Balance to the omnibus deposit account at Bank. Company's shares of the MMMF ("Investment Balance") will be held in Bank's name, as agent on behalf of all of its customers invested in the MMMF, in an omnibus investment account at the custodian for the MMMF. Company's funds held in the omnibus deposit account at Bank are eligible for FDIC insurance; Company's Investment Balance is not FDIC insured.

11.3. Statements. Bank will make a periodic statement available to Company showing the Investment Balance and Company's purchases and redemptions of MMMF shares during the statement period. Company may also telephone Bank at its customer service number (1-800-289-3557) to determine the Investment Balance as of the close of the previous Business Day.

11.4. Termination, Suspension of Service. Company's investment in the MMMF shares will be credited by Bank to the Account within three Business Days from Bank's (i) receipt of a notice from Company to Bank terminating the Service or (ii) suspension of the Service, on the closing price of the Business Day on which Company's MMMF shares are sold. Accrued dividends attributable to the period when the Investment Sweep Option was in effect will be paid no later than the fifth Business Day of the month following the last month that the Investment Sweep Option was in effect.

11.5. Shareholder Communications. All shareholder communications with respect to the MMMF will be forwarded to Company's current address as shown on Bank's records.

11.6. Dividend Accruals. Daily dividend accruals are based on the Investment Balance at the end of each day. If Company's Account is credited for a MMMF redemption on a day preceding a non-Business Day, the redemption amount will be subtracted from the Investment Balance before the non-Business Day dividend accruals are calculated.

12. Additional Disclosures Applicable to Wells Fargo Stagecoach Sweep Commercial Paper Option.

THE COMMERCIAL PAPER CONSTITUTES AN UNSECURED OBLIGATION OF WELLS FARGO & COMPANY ONLY AND IS NOT AN OBLIGATION OF BANK. THE COMMERCIAL PAPER IS NOT A DEPOSIT, IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND IS NOT INSURED OR GUARANTEED IN ANY WAY BY THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF. THE COMMERCIAL PAPER IS BEING ISSUED UNDER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND OF VARIOUS STATE SECURITIES LAWS, AND HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES REGULATORY AUTHORITY.

12.1. Wells Fargo & Company Information. Wells Fargo & Company is a diversified financial services company organized under the laws of the State of Delaware and registered as a financial holding company and a bank holding company under the Bank Holding Company Act of 1956, as amended. Its businesses provide banking, insurance, investment, mortgage and consumer finance through stores, the Internet and other distribution channels across North America and elsewhere internationally. Wells Fargo & Company files annual, quarterly and special reports, proxy statements and other information with the U.S. Securities and Exchange Commission ("SEC"). Copies of Wells Fargo & Company's SEC filings are available to the public over the Internet at the

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SEC's web site at . Copies of these filings are also available free of charge by writing to the Wells Fargo & Company Corporate Secretary's Office, Wells Fargo Center, Sixth and Marquette, MAC N9305-173, Minneapolis, MN 55479.

- 12.2. **General.** Funds transferred to Commercial Paper pursuant to this Service Description will constitute a loan by Company to Wells Fargo & Company.
- 12.3. **Special Customer Eligibility Requirements.** In connection with any investment made by Company in Wells Fargo Commercial Paper, Company represents and warrants to Wells Fargo & Company and Bank that Company (a) is a sophisticated investor for purposes of applicable federal and state securities laws and interpretations applicable to investments by such investors, including investments in commercial paper, (b) is qualified to make an investment in Wells Fargo Commercial Paper, and (c) understands the risks of investing in commercial paper generally.
- 12.4. **Interest.** Funds held in the Commercial Paper Option will bear interest at a variable rate determined by Bank from time to time in its sole discretion and will be credited to the Account as agreed by Company and Bank. If Company has elected to be paid interest on a monthly basis, pending any such payment, Company's interest accrued each day on the Commercial Paper will continue to accrue and compound on a daily basis. For advance information about the interest rate on any given Business Day, Company may contact its relationship manager at Bank.
- 12.5. **Statements.** Bank will make a periodic statement available to Company showing the Account balance for each day in, and the amount of interest earned for, the statement period. Additionally, Company may elect to receive a daily confirmation showing the Account balance and the amount of interest earned for the preceding day.
- 12.6. **Company's Right to Enforce Remedies.** In the event of any default by Wells Fargo & Company on any Commercial Paper, Company will have the right to maintain an action in its own name against Wells Fargo & Company to enforce its rights and remedies under the Commercial Paper.
- 13. **Additional Disclosures Applicable to Wells Fargo Money Market Savings Account Sweep Option.** Company's Savings Account is governed by Bank's Commercial Account Agreement and applicable Treasury Management pricing schedule, both of which are made available separately to Company.
- 14. **FDIC Disclosures.** FDIC regulations require all insured depository institutions to disclose in writing to sweep account customers whether funds in a sweep account are deposits within the meaning of 12 U.S.C. 1813(l) and, if the funds are not deposits, the status such funds would have if the depository institution failed.
 - 14.1. **Wells Fargo Stagecoach Sweep Preferred Option.** Funds held on Company's behalf in Bank's Offshore Account are not deposits. If Bank were to fail, these funds would be treated as non-deposit, unsecured, general creditor claims against the receivership and will not be eligible for FDIC insurance or depositor preference status.
 - 14.2. **Wells Fargo Stagecoach Sweep Repurchase Agreement Option.** Company's Fractional Interest is not a deposit. The Repurchase Agreement Option meets the FDIC's requirements for a properly executed repurchase agreement. If Bank were to fail, Company's funds used to purchase Company's Fractional Interest would not be eligible for FDIC insurance. The FDIC would treat Company as a secured creditor to the extent of the then-current value of Company's Fractional Interest and as an unsecured

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general creditor to the extent the Repurchase Price exceeded the then-current value of Company's Fractional Interest.

- 14.3. **Wells Fargo Stagecoach Sweep Money Market Mutual Funds Option.** Funds held on Company's behalf in the omnibus deposit account at Bank are deposits and are insured under applicable FDIC insurance rules and limits. Company's MMMF shares held in the omnibus investment account in Bank's name at the custodian of the MMMF are not deposits and will not be eligible for FDIC insurance. Company is the owner of its MMMF shares.
- 14.4. **Wells Fargo Stagecoach Sweep Commercial Paper Option.** Funds invested on Company's behalf in Commercial Paper are not deposits and are not eligible for FDIC insurance. Company is an unsecured general creditor of Wells Fargo & Company to the extent of its investment in Commercial Paper.
- 14.5. **Wells Fargo Money Market Savings Account Sweep Option.** Funds held in Company's Savings Account are deposits.

WELLS FARGO STAGECOACH PREPAID CARD SERVICE DESCRIPTION AND TERMS OF SERVICE

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1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Stagecoach Prepaid Card Service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Service ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The Service allows Company to make payments to Wells Fargo Stagecoach Prepaid Card users (each, a "Card User") by depositing funds into a specified account (which funds the Card) via transfers through an automated clearing house ("ACH"). Each Card User can then access deposited funds through certain national and regional automated teller machine and point of sale networks, as well as at any financial institution or merchant that accepts Visa® debit cards, by using a Wells Fargo® Stagecoach® Prepaid Card ("Card"). The Card is reloadable from time to time by Company via ACH transfers.
3. **State Laws and Regulations.** In the event the Card is used by Company to pay wages, salaries, or other compensation to Card Users, Bank makes no representation or warranty regarding whether the Service will allow Company to satisfy any requirement or comply with any restriction which may be imposed upon Company as an employer under any state labor code or any other law or regulation, including, without limitation, laws prohibiting discount in wages or laws relating to fee restrictions. Company acknowledges that (a) it has made its own independent investigation and received its own legal advice, and Bank has made no representations or warranties to Company, regarding whether the use of the Service will allow Company to satisfy any such requirement or comply with any such restriction; and (b) Company is not relying on any information or opinion provided by Bank regarding any such requirement or restriction. Company further acknowledges that by electing to use the Service, it agrees to be bound by the terms and conditions set forth in this Service Description and Terms of Service ("Service Description") as well as the Service Documentation.
4. **Bank's Duties.**
 - 4.1. Under the Service, Bank shall issue Cards to Card Users. In connection with such issuance, Bank shall (a) prepare and deliver the Wells Fargo Stagecoach Prepaid Card User Enrollment Form (the "Enrollment Form") to Company; (b) prepare the Wells Fargo Stagecoach Prepaid Card Packets, including the required Bank disclosures and other materials contained therein (the "Card Packets"); and (c) deliver the Card Packets to Company for delivery to Card Users or directly to Card Users identified by Company, as directed by the Card User on the Enrollment Form.
 - 4.2. Upon request by a Card User, Bank shall deliver transaction history statements to the Card User at the address on the Enrollment Form and make transaction history information available electronically online to Card Users.
 - 4.3. Bank shall make balance information available telephonically to Card Users. Bank shall be responsible for Card customer service, including all Card service and billing inquiries (other than Card User inquiries related to the amount or timing of funds transferred to the Card by Company). Bank shall also process ACH transfers from Company's account to the specified account funding the Card pursuant to the Service.

- 4.4. To the extent applicable, Bank shall be responsible for discharging its obligations under unclaimed property laws in connection with the funds loaded on the Cards.

5. Company's Duties.

- 5.1. Company shall require each employee that applies for a Card ("Applicant") to complete in full and sign an Enrollment Form. Each Card User will have completed in full and signed an Enrollment Form before being issued a Card.
- 5.2. Before submitting Applicant's information on an Enrollment Form to Bank or Bank's Agent, Company shall (i) review the Enrollment Form to ensure that it includes at a minimum the Applicant's name, physical address, date of birth, and social security number, (ii) collect a copy of an unexpired government-issued identification document for Applicant that evidences nationality or residence and bears a photograph or similar safeguard, such as a driver's license or passport, and (iii) verify that Applicant's information on an Enrollment Form is consistent with Applicant's information on Applicant's identification document(s).
- 5.3. For Enrollment Forms completed before the date of this Service Description, Company shall maintain copies of each Enrollment Form completed by an Applicant for a period of at least five (5) years after Card Applicant's employment with Company terminates.
- 5.4. For Enrollment Forms completed on or after the date of this Service Description, Company shall provide a copy of each completed Enrollment Form to Bank or Bank's agent (i) by faxing the Enrollment Form to a facsimile number specified by Bank or Bank's agent, or (ii) by sending the Enrollment Form from a secure e-mail account to an e-mail address specified by Bank or Bank's agent. Bank will maintain copies of each Enrollment Form completed by an Applicant pursuant to applicable regulatory requirements.
- 5.5. Company shall allow Bank or representatives of any government agency having jurisdiction over Bank, including, without limitation, the Office of the Comptroller of the Currency, upon reasonable notice to Company, to review Company's records in order to confirm that the requirements contained in Sections 5.1, 5.2, 5.3 and 5.4 have been satisfied.
- 5.6. Company shall provide to Bank or Bank's agent, or both, as Bank requests (and in such format and through such electronic, magnetic, or other means or media as Bank may specify from time to time): (a) the Applicant's name, physical address, social security number, and date of birth (the "Identifying Information") provided by Applicant in the Enrollment Form; (b) Card Applicant's personalization information (i.e., embossing the Card with the name of the Card User); and (c) any other information Bank reasonably requests in connection with the issuance of the Cards.
- 5.7. Consistent with Bank's efforts to comply with various regulations governing money-laundering activities and terrorism fighting, Bank obtains, verifies, and records information to reasonably identify each Card User receiving a Card. Bank relies on Company as an agent for collection of information needed to identify the Card Users. Bank also relies on Company as its agent to provide the Customer Identification Program (CIP) notification to Card Users.

- 5.8. On the Enrollment Form, Applicants may authorize Company on Card Users' behalf to receive Card Packets, transaction history statements, and other materials regarding their Cards, in which case, Company shall promptly deliver to the Card Users the Card Packets, transaction history statements, and other materials provided by Bank from time to time. In all other circumstances, Bank shall deliver or make available the necessary material directly to the Card Users as provided in Section 4.2 above.
- 5.9. Without Bank's prior written consent, Company shall make no changes to the Enrollment Form, the Card Packets, including, without limitation, the disclosures and other materials contained therein, or any other materials, and any revisions or updates thereto, provided by Bank to Company or Card Users, or both, in connection with the Service.
- 5.10. To the extent Company receives any transaction history statements or other material related to a particular Card User's use of his or her Card, Company agrees not to review or access in any way such information without Card User's consent.
- 5.11. As requested by Bank, Company shall provide to Bank, on each applicable business day and on a consolidated basis, the Funds Transfer Information for all Card Users. For purposes of this Service Description, the terms "Funds Transfer Information" means information provided to Bank by Company, either directly or through the ACH system, to credit, or debit the available funds of, any Card User, which information shall be provided to Bank in a form and through such electronic, magnetic, or other means or media as Bank may approve from time to time and shall include the date on which funds are to become available to the Card User.
- 5.12. Company shall obtain from each Card User all authorizations required by applicable laws, regulations, or otherwise to perform transfers to credit or debit the available funds of such Card User.
- 5.13. Company agrees to cooperate fully with Bank in furnishing any information or performing any action reasonably requested by Bank that is needed by Bank to perform its obligations under this Service Description or to comply with applicable laws and regulations. Company agrees that it shall furnish Bank with true, accurate, and complete copies of such records and all other information with respect to the Service as Bank or its authorized representative may reasonably request, provided however, that it shall not be required to divulge any records to the extent prohibited by applicable law.
- 5.14. Company shall instruct Card Users to direct all their inquiries regarding the Cards to Bank's toll-free customer service number.
- 5.15. Company shall give Bank timely written notice of any Card User authorization which has been rescinded or otherwise modified.
- 5.16. Company shall not require an intended recipient of an electronic fund transfer under the Service to establish an account with Bank as a condition of employment.
- 5.17. Company may make available to Card User only one Card per Card User at any given time. Card User may request that additional Cards be issued to persons whom Card User authorizes to have access to the funds associated with the Card ("Authorized Users"). Card Users that are domiciled outside the United States or its territories cannot request that additional Cards be issued to Authorized Users. Company reserves the right to limit the number of additional Cards that will be issued.

- 5.18. Other than information necessary to use the Card, Company shall not disclose to Card User any information that would enable the Card User to cause any credit of funds to, or debit of funds against, the Card User's specified account.
- 5.19. Company has the right to deduct funds from the funds accessible through a Card in order to correct a previous error or overpayment to a Card User or for other reasons in accordance with applicable law. Subject to this right, Company acknowledges and agrees that all funds transferred to a Card are owned by the Card User.
6. **Card User Prerequisite.** In order to receive and use a Card, a Card User shall have completed in full, signed, and submitted to Company the Enrollment Form, and received the disclosures and other materials contained in the Card Packet. Bank reserves the right to revoke any Card User's use of the Card in accordance with the Stagecoach® Prepaid Card Terms and Conditions ("Terms and Conditions"). Further, in addition to Bank's rights to terminate under the Master Agreement, Bank may terminate Company's use of the Service if, in Bank's sole determination, there exist excessive levels of fraud, regulatory and/or reputational risk, there has been a violation of this Service Description by Company, or Bank suspects abuse of the Service in any manner.
7. **Representations and Warranties.**
- 7.1 As of each date that: (i) Company delivers the Identifying Information or the Funds Transfer Information, or (ii) pursuant to Company's instructions, the available funds of any Card User are credited or debited, Company represents and warrants that all information and amounts related to the Card User's Identifying Information or Funds Transfer Information, and on all paper, electronic, magnetic or other transmissions submitted in connection therewith, are accurate, true and correct and that, with respect to each Card User:
- 7.1.1. For Card Users designating Company as his/her agent on the Enrollment Form, Company has delivered to such Card Users a Card Packet or, provided Bank has given its prior written approval for the delivery of Cards and the Terms and Conditions to such Card Users in a different manner, a Terms and Conditions (which has been delivered to such Card Users in the manner approved by Bank.)
- 7.1.2. Company has delivered to such Card User all supplemental disclosure statements or other materials provided by Bank, from time to time.
- 7.1.3. Company has been authorized by the Card User, in a manner or form which complies with all applicable federal, state, and local laws and regulations to (a) transfer such Card User's Identifying Information to Bank or Bank's agent, and (b) transfer such Card User's payment amounts or reimbursements to Bank for loading on to a Card and to credit or debit such Card User's available funds, and that such authorization has not been rescinded or otherwise modified and remains in full force and effect.
- 7.2. Company warrants that with respect to any instructions to Bank to debit available funds of Card User, Company has complied with applicable state or federal law as to Company's right, as an employer, to debit the Card User's available funds.
- 7.3. Company warrants that it has not required any of its employees to complete and sign an Enrollment Form or otherwise agree to payment amounts through this Service.

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~~8. **Indemnification.** Company shall indemnify, defend, and hold harmless Bank, its respective affiliates, employees, representatives, successors, and permitted assigns from and against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs, and liabilities, including, without limitation, reasonable attorneys' fees and expenses incurred in investigation or defense, regardless of the theory of liability or the nature of the legal proceeding ("Damages"), to the extent such Damages arise out of or relate to Company's use of the Service as a means of compensating or reimbursing its employees or other payees or its failure to comply with this Service Description.~~

9. **Survival.** Sections 3, 6, 7, and ~~X~~ shall survive termination of the Service.

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STOPS—IMAGES—SEARCH (“SIS”) SERVICE DESCRIPTION

This Service Description contains provisions which, in addition to the provisions contained in the Master Agreement for Treasury Management Services between Bank and Company (the “Agreement”), will govern the Stops—Images--Search {“SIS”} Service (the “Service”).

1. **The Service.** Company may, using a computer or a computer and browser acceptable to Bank, request stop payment orders on checks drawn on Company's deposit account(s) or Company's account(s) with another financial institution maintained in connection with the Controlled Disbursement Service (a “Controlled Disbursement Account”) and, where applicable, request photocopies of checks that have cleared Company's deposit account(s) or Controlled Disbursement Account(s).
2. **Stop Payments.**
 - 2.1 Requirements. Bank may pay a check against Company's deposit account(s) whenever it is presented and without regard to its date. If Company does not want Bank to pay a check, it must place a stop payment order which is valid for the period specified when Company opened its deposit account and must be received within sufficient time for Bank to act.
 - 2.2 Limitations. A stop payment order will be ineffective with respect to (a) a check deposited to an account at a Wells Fargo Bank if it cannot be charged back without creating an overdraft in that account, and (b) a check that was cashed by any Wells Fargo Bank. Company authorizes Bank to accept telephone stop payment orders from any person who Bank in good faith believes is acting on Company's behalf. In Texas, Company must confirm an oral stop payment order in writing.
3. **Survival.** The provisions of this Service Description designated as Sections 2 and 3 will survive termination of the Service.

WIRE TRANSFER SERVICE DESCRIPTION

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") wire transfer service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of the Service.** The Service enables Company to instruct Bank to transfer funds in accordance with Article 4A of the Uniform Commercial Code as amended from time to time ("UCC 4A") and the rules and regulations of any funds transfer system Bank uses to effect the transfer. In this Service Description, an instruction to Bank (including any communication cancelling or amending an instruction) in Company's name to transfer funds from Company's account at Bank or Bank's affiliate (each, an "Account") is a "Payment Order" (as defined in UCC4A). Section 5 of this Service Description describes (a) the means Bank offers to Company for transmitting Payment Orders to Bank (each, an "Initiation Method") and (b) the means Bank will use to verify Company's authorization of a Payment Order or a communication amending or canceling a Payment Order (each, a "Security Procedure").
3. **Preparation of Payment Orders; Processing Schedules.** Company will prepare each Payment Order in accordance with guidelines Bank separately makes available from time to time. Bank will execute each Payment Order in accordance with Bank's then current processing schedule and any instructions Company furnishes with the Payment Order regarding the date a Payment Order is to be executed. A Payment Order will be deemed received by Bank when Bank has verified it in compliance with the Security Procedure. If Bank receives a Payment Order after Bank's applicable cutoff time on any Business Day, Bank will treat the Payment Order as having been received prior to Bank's applicable cutoff time on Bank's next Business Day. A "Business Day" is every day except Saturday, Sunday, and federal holidays.
4. **Inconsistency of Name and Number.** If a Payment Order describes the person to receive the funds that are the subject of the Payment Orders both by name and identifying number, Bank may execute the Payment Order on the basis of the identifying number, even if the number identifies a person different from the named person. If a Payment Order describes a financial institution both by name and identification number, the identification number may be relied upon to identify the financial institution, even if the identification number refers to a financial institution other than the named financial institution.
5. **Initiation Methods and Security Procedures.** This section lists the Initiation Methods and Security Procedures Bank offers for wire transfers. Company's elections regarding Initiation Methods and Security Procedures is/are set forth in the Acceptance.
 - 5.1. **Voice Initiation Method.**

Bank's voice initiation security procedure consists of confirming the personal identification number ("PIN") accompanying a Payment Order corresponds with a valid PIN assigned to Company for voice-initiated Payment Orders.

 - 5.1.1. **Telephone Verification Service.** If Bank receives a voice-initiated, non-repetitive Payment Order that exceeds the applicable pre-designated limit, Bank will make one attempt to telephone person(s) designated by Company on the most current

setup form for Company in Bank's records to verify the Payment Order. If Bank is unable to complete the call, Bank will not process the Payment Order.

5.2. Commercial Electronic Office® (CEO®) Initiation Method.

CEO is Bank's electronic banking portal that is accessed via the Internet. Authorized users may access Bank's CEO Internet ACH Service through the portal. CEO security procedures include log-on credentials specified by Bank (that may include a Company ID, user ID and password) and any other authentication or authorization process Bank requires from time to time. Bank will use the CEO security procedures to authenticate each Payment Order received through CEO in Company's name.

5.3. Direct Origination Initiation Method.

Secure Application File Exchange Transmission ("SAFE-T"). This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https) FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment Order transmitted to Bank in Company's name.

IBM® - Sterling Connect:Direct® with Secure Plus+. Secure Plus+ is an add-on to Connect:Direct® to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Connect:Direct® is a registered trademark of Sterling Commerce, Inc., an IBM Company.

5.4. Payment Manager® Initiation Method.

Secure Application File Exchange Transmission ("SAFE-T"). This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2) that Bank uses to authenticate each Payment Order transmitted to Bank in Company's name.

Machine-to-Machine ("M2M"). This transmission method uses an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL). Bank uses digital certificates to authenticate each Payment Order transmitted to Bank in Company's name.

IBM® - Sterling Connect:Direct® with Secure Plus+. Secure Plus+ is an add-on to Connect:Direct® to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Connect:Direct® is a registered trademark of Sterling Commerce, Inc., an IBM Company.

Value-Added Network ("VAN"). With this transmission method, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting Payment Orders may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each Payment Order transmitted to Bank through the VAN in Company's name.

5.5. SWIFT® Initiation Method.

SWIFT has established procedures for controlling access to SWIFT messaging services (each, an "Access Control") that may include without limitation access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages including without limitation Payment Orders based on SWIFT message type prior to accepting them for routing as SWIFT messages (each, an "Authenticated Message"). This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys ("BKE"), entered into a relationship management application ("RMA") agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time (each, an "Authentication Procedure").

5.6. Security Procedure Elected by Company's Third Party Service Provider.

Company is utilizing a Third Party Service Provider ("TPSP") as defined in the ACH Rules to originate Payment Orders on Company's behalf. Bank will authenticate each Payment Order transmitted to Bank in Company's name in accordance with the security procedure the Company's TPSP has elected.

5.7. Non-Standard Security Procedure.

If Company has refused to utilize any of the security procedures described above, then the Security Procedure Company will use is described on Attachment B to the Acceptance.

- 6. Authorization to Pay.** Company authorizes Bank to (a) execute any Payment Order Bank verifies in accordance with the Security Procedure and (b) debit the account specified in the Payment Order (and if no account is specified, the Account or any other account of Company at Bank or an affiliate) even if a debit results in an overdraft on the execution date (as defined in UCC4A). Company will maintain sufficient available funds in the account specified in the Payment Order at the time of each debit.

- ~~**7. Company's Duty to Report Erroneous or Unauthorized Transfer Instructions.** Company will exercise ordinary care to determine whether a Payment Order accepted by Bank was either erroneous or not authorized and to notify Bank of the relevant facts within a reasonable time not exceeding fourteen (14) days after Company receives notification from Bank that the Payment Order was accepted or that the Account was debited with respect to the Payment Order, whichever is earlier. Company will be liable to Bank for the loss Bank incurs as a result of Company's failure to act in accordance with this section.~~

- 8. Rejected Payment Orders.** If a Payment Order is rejected for any reason Bank will attempt to notify Company promptly so Company may cure the defect but will have no liability to Company for a rejected Payment Order or any loss resulting from Bank's failure to provide notice.

- 9. Cancellation, Amendment, Reversal.** A Payment Order will be final and not subject to cancellation, amendment or reversal by Company, except Bank may, at Company's request, make an effort to effect such cancellation, amendment or reversal without incurring any liability for its failure or inability to do so.

- 10. International Wire Transfers.** A Payment Order expressed in U.S. Dollars will be sent in U.S. Dollars. Company may request that prior to executing a Payment Order, Bank convert the amount to be transferred from U.S. Dollars to the currency of a designated foreign government

or intergovernmental organization ("Foreign Currency") at Bank's sell rate for exchange in effect on the date Bank executes the Payment Order. ~~If the financial institution designated to receive the funds does not pay the beneficiary specified in a Payment Order payable in Foreign Currency and the funds are returned to Bank, Bank will not be liable for a sum in excess of the value of the funds after they have been converted from Foreign Currency to U.S. Dollars at Bank's buy rate for exchange at the time the cancellation of the Payment Order is confirmed by Bank. Bank will not be liable for any failure or delay by any financial institution or other third party in the designated foreign country in executing or failing to execute any Payment Order Bank transmits to a foreign country.~~

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11. **Drawdown Requests.** A "drawdown request" is an instruction from Company to another depository institution to debit (a) an account at that institution and transfer the funds to Bank (each, an "outgoing drawdown request") or (b) the Account and transfer the funds to that institution (each, an "incoming drawdown request"). In this Service Description, "Payment Order" includes drawdown requests. Bank may execute an incoming drawdown request that conforms with instructions it receives through Fed Wire, SWIFT, CHIPS or any other funds transfer system, provided such instructions are not inconsistent with instructions Company separately provides in writing. The authority to execute the incoming drawdown request will continue until Bank receives express written notice from Company that such authority is revoked.

12. **Limitation of Bank's Liability.** If Bank executes Company's Payment Order by sending instructions to another financial institution, Bank may send the payment order by any transmission method and by any route Bank in its sole discretion considers reasonable. ~~Bank will not be liable for any third party's failure to or delay or error in processing a Payment Order.~~ If the beneficiary bank does not pay the beneficiary specified in the Payment Order, a refund will be made only after Bank has received confirmation of the effective cancellation of the Payment Order and Bank is in free possession of the funds debited or earmarked in connection with the Payment Order. If Bank is notified it did not transfer the full amount stated in a Payment Order, Bank's sole obligation will be to promptly execute a second Payment Order in the amount of the stated deficiency. ~~If Bank executes a Payment Order in excess of the amount stated in the Payment Order, to the extent Company does not receive the benefit of the Payment Order, Bank will only be liable for any loss of the principal amount transferred in excess of the amount stated in the Payment Order.~~ Additionally, Bank will be liable for the amount of interest Company has lost due to the transfer of the excess amount, computed at the then current Federal Funds rate. ~~However, Bank's liability for loss of interest will be limited to twenty (20) calendar day's interest. This section sets forth Bank's complete liability for a Payment Order issued or received under this Service Description.~~

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13. **Survival.** Sections 4, 5, 6, ~~X~~ 8, 9, 10, 11 and 12 will survive the termination of Services.

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Wire Transfer Services Security Procedure Agreement and Customer Setup

Complete this form to set up a customer for voice wire initiation. This form requires both customer and banker signatures. Forms received without signatures will be returned to the banker unprocessed. To set up SWIFT wire initiation, use the SWIFT Wire Initiation Setup form, WTR 6667.

Keying detailed wire information electronically into this form, by the banker on behalf of the customer, may result in a more accurate and legible form that can be processed more quickly, and retained more easily.

Section 1 – Agreement

This form is to establish new voice wire services. To update existing security procedures or for account maintenance please refer to forms WTR 1506, Wire Transfer Security Procedure Agreement or WTR 4777, Wire Transfer Customer Maintenance.

This agreement is made this ____ day of _____, 20__ by and between _____ ("you" or "your") and Wells Fargo Bank, N.A. ("Bank"). By signing below, you acknowledge receiving and agreeing to be bound by these terms and conditions and those referred to in the Wire Transfer Services Agreement or the Master Agreement for Treasury Management Services Description and Wire Transfer Services Description and, if applicable, the CEO Service Description. You understand that in any instructions to transfer funds by wire from accounts you maintain at Bank ("Orders"), Bank may rely solely (i) on the account number of the person ("Beneficiary") who is to receive the wire transfer rather than the Beneficiary's name, and (ii) if provided by you, on the identification number of any other financial institution through or to which the funds are to be transferred, rather than the name of the financial institution. You agree that you are bound by any Order, whether or not authorized, issued in your name and accepted by Bank in compliance with the Security Procedure selected by you.

Section 2 – Standard Security Procedures

2.1 Voice Initiated Orders. Bank's standard Security Procedures consist of confirming that the personal identification number ("PIN") that accompanies an Order corresponds with a valid PIN assigned to you on voice-initiated Orders. A PIN is required for all voice-initiated transfers.

2.2 Terminal Initiated Orders. Bank's standard Security Procedures for terminal-initiated Orders (including Orders placed via the Internet) consist of RSA SecurID® or other system security features offered by Bank.

Section 3 – Additional Security Procedures for Specific Services. (Unless designated as "optional", the following Security Procedures are required in addition to the Standard Security Procedures.)

3.1 Voice Initiated, Non-Repetitive wires. If you are doing Repetitive wires only do NOT complete Section 3.1.1.

3.1.1 OPTIONAL Verify Callback Service: (Selecting this fee-based service requires a minimum of two persons with wire transfer authority because the initiator of a wire cannot also approve the wire.) The Bank will make a reasonable attempt to telephone an authorized approver, not the initiator, to verify that the voice initiated wire transfer order is authorized, when the amount of the Non-Repetitive Outgoing wire is \$ _____ or more. If the Bank is unable to contact or obtain approval from an Authorized Approver, the transfer will not be processed. By specifying an amount in the space provided above, you agree with these terms. Bank will not telephone to verify a Repetitive wire transfer regardless of the amount. If the form does not indicate an approver, other than the initiator, the service cannot be provided and cannot be setup.

Complete this section for authorized approvers and provide your signature on page 3 as authorization to assign the designated persons.

Individuals authorized to approve wires (Verify Call Back) first & last name	\$ Limit	Phone number including area code
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	

Once the customer's approval/signature is received on the form, the Banker/Relationship Manager must approve/sign the form, then fax to 866-922-6202, Wire Implementation from a valid Wells Fargo Fax. File copies in your location's record-retention file.

Account Number

3.2 Commercial Electronic Office (CEOSM) Wire Transfer Service (or WellsNet Wire Transfer Service.)

3.2.1 Availability of Self-Administration. If you request Self-Administration of your access to the CEO, most of the set-up and administration of your access to CEO services (including the CEO Wire Transfer Service) will be performed by your Company Administrator rather than Bank. Three levels of access authorization are available: *Company Administrator, Administrator and Operator*. A "Company Administrator" has access to all services you receive through the CEO and is able to set up and administer access for other Company Administrators, Administrators and Operators for all such services. An "Administrator" has access to specific CEO services and can set up other Administrators and Operators for such specific services. "Operators" are authorized to access specific services and functions (for example, the create/modify function or the verify function for wire transfer requests) within those services, but they are not authorized to set up or administer access for such services or functions.

3.2.1.1 No Self-Administration. If you do not have Self-Administration, your designated security administrator will determine Operators and the dollar limits per transaction and per day assigned to each Operator and will communicate this information to Bank. Bank will set up the Operators by assigning each a personal ID code. Your security administrator will also be responsible for communicating any changes in Operators or in Operator limits or authorization(s) to Bank. You will promptly report to Bank any lost or stolen token cards.

3.2.1.2 Self-Administration. If you have requested Self-Administration, Bank will assign a Company ID code and will set up your first Company Administrator by assigning a personal ID code and password to be used when he/she first enters the CEO number. He/She can then set up additional Company Administrators, Administrators or Operators. Any Company Administrator: (a) can set up additional Company Administrators, Administrators and Operators (issuing each a password that will be changed upon first entry to the CEO) and a personal ID code; (b) can reset passwords for all services; and (c) shall be required to immediately disable access to the CEO for any Company Administrator, Administrator or Operator who ceases to be a Company Administrator, Administrator or Operator. An Administrator can set up additional Administrators and Operators and reset passwords for the specific service(s) he/she is set up to access. Bank will not know the password of any Company Administrator, Administrator, or Operator except the initial password assigned to the first Company Administrator. Bank will give each Company Administrator and Administrator a token card and a PIN, known only by them individually and Bank. Self-Administration will also allow a Company Administrator or an Administrator to initiate a request to Bank to reassign an existing token card to another Company Administrator, Administrator or Operator.

3.2.1.3 Self-Administration with Dual Control. If you have requested Self-Administration with dual control, Bank will assign a Company ID code and will set up your first two Company Administrators by assigning each a personal ID code and password to be used when each first enters the CEO. All actions that can be performed by a Company Administrator or an Administrator in Section 3.2.1.2 will require that one Company Administrator (or Administrator with appropriate function access) initiate the action and a second Company Administrator (or Administrator with appropriate function access) approve the action.

3.2.2 Token Cards. Bank will assign a token card to each Operator. The token card generates a random and unique security code every minute. The code combines with a PIN to provide a unique password (the "Passcode") every minute. The PIN is set by each Operator individually upon first logon. The Passcode must be presented with each request to access the Service and is used by Bank to authenticate the identity of Company and/or the person originating the request. Bank will verify each request to access the Service by determining if the Passcode is valid for the associated personal ID code for the Operator and if the personal ID code used by the person requesting access is the personal ID code of one of the persons you have designated in writing as being authorized such access. Bank has no obligation to confirm in any other way the identity of any person making such a request.

3.2.3 Non-Repetitive Requests. For domestic and international Non-Repetitive wire transfer requests, Operators who create/modify such requests additionally will be required to use a Password which is initially provided to the Operator by Bank, or by a Company Administrator or Administrator if you have Self-Administration, and is changed by the Operator upon first logon.

3.3 Electronic Commerce/Payment Manager Services. (Check applicable box.)

3.3.1 Password – File Transmission (Non-Encrypted). This procedure requires that a unique eight-digit code separately agreed upon in writing by you and Bank be presented with your wire file. You may be required to change the code on a regular basis.

3.3.2 Secure File Transport (Encrypted). This procedure uses 128-bit SSL (Secure Sockets Layer) encryption and requires the use of a transmission ID and a transmission password. Use of a digital certificate is optional.

Section 4 – Additional Provisions

4.1 Separation of Operator Function. Bank strongly recommends that you separate among Operators using the Wire Transfer Service the ability to create/modify and verify wire transfer requests in Order to reduce your risk of suffering a loss resulting from an unauthorized or fraudulent wire transfer.

4.2 Additional Actions by Bank. Any actions Bank takes to detect erroneous wire transfer requests, or any actions Bank takes beyond those described above in an attempt to detect unauthorized requests or instructions will be taken at Bank's sole discretion. No matter how many times Bank takes these actions they will not become part of Bank's standard procedures for attempting to detect such erroneous or unauthorized requests or instructions, and Bank will not in any situation be liable for failing to take or to correctly perform these actions.

4.3 Protection of Passwords, PINs, etc. It is your responsibility to ensure that the ID codes, passwords, token cards, PINs, and Passcodes are known to, and used only by, persons who have been properly authorized by you to use the Wire Transfer Service. Bank, in its sole discretion, may cancel or reissue any PIN it believes may have been compromised, including, without limitation, a PIN that has never been acknowledged as having been received and any PIN that has been used by anyone other than the intended authorized user.

Complete the Customer Setup on page 3, including Banker & Customer signatures.

Once the customer's approval/signature is received on the form, the Banker/Relationship Manager must approve/sign the form, then fax to 866-922-6202, Wire Implementation from a valid Wells Fargo Fax. File copies in your location's record-retention file.

Account Number

Section 5 – Setup Information

5.1 Account numbers used (list accounts that wires will debit.) For additional accounts attach a signed listing with notation of Customer's name and the additional account numbers. Check the appropriate box for each account number to identify the account type. For multiple account setups the Tax ID number must be the same for all accounts listed. If not then a separate Wire Transfer Services Security Procedure Agreement and Customer Setup form must be completed for each Tax ID number.

1) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	2) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	3) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	4) <input type="checkbox"/> DDA <input type="checkbox"/> G/L
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5.2 Alternate Account to be charged for wire fees

List account only if wire fees are to be assessed to this account for the accounts listed above in section 5.1

DDA
 G/L

5.3 Account Relationship Link

To link accounts to the Master Account number (for Book Transfer pricing) enter the Master Account number

5.4 Advice Information – Additional fees apply for these services. For Fax or Email Notification on intraday wire activity use the InfoFax setup form.

Mail Advice for (if no choice is made will default as No Advice)

Mail Advice to (if different than address noted below in section 5.6)

Debit Wires Credit Wires No Mail Advice

5.5 Authorized Callers List the people authorized to initiate wires. Special notes and instructions for the following columns:

Caller \$ Limit = Use "N" if unlimited. The limit applies to all functions unless noted otherwise.

Initiation Type = If no choice is noted for Wire Initiation we will set the individual up for both Repetitive and Non-Repetitive Wire Initiation. Complete by checking appropriate box:

R = Repetitive / B = Both Repetitive & Non-Repetitive.

Authorized Callers first & last name	\$ Limit	Phone Number including area code	Initiation Type [√]	
			R	B
	\$		<input type="checkbox"/>	<input type="checkbox"/>
	\$		<input type="checkbox"/>	<input type="checkbox"/>
	\$		<input type="checkbox"/>	<input type="checkbox"/>
	\$		<input type="checkbox"/>	<input type="checkbox"/>
	\$		<input type="checkbox"/>	<input type="checkbox"/>
	\$		<input type="checkbox"/>	<input type="checkbox"/>

NOTE: If the version of the Acceptance of Services includes the acceptance of the wire transfer security procedures, the customer is not required to complete section 5.6 below.

6 Customer Approval – Signatures as required by Certificate of Authority or Signature Card.

Legal Name as it appears on your account		Customer's Primary Phone No.	
Mailing address for PINs and mail advice including City, State, and zip code. (If blank, items will be mailed to address on primary statement mailing address.)			
Printed Name of Authorized Signer		Printed Name of Authorized Signer	
Signature X	Date	Signature X	Date

5.7 Bank Approval – Forms submitted without Customer and Banker signatures or older than 90 days will be returned to the Banker unprocessed.

Customer's 1 st ID type, number, issued by State/Country & Expiration Date		Customer's 2 nd ID, type, number, issued by State/Country & Expiration Date	
Banker's/Officer's Printed Name	Bank MAC	Document Prepared by & phone # (in case of questions about this setup)	
Banker/Officer's Signature — Required X	Date	Banker/Officer's Phone #	Banker/Officer's Fax #

Banker's Wells Fargo email address for notification. A reasonable attempt will be made to contact the banker at the Wells Fargo email provided upon completion. Notifications will NOT be sent to any email address outside the Wells Fargo system.

Once the customer's approval/signature is received on the form, the Banker/Relationship Manager must approve/sign the form, then fax to 866-922-6202, Wire Implementation from a valid Wells Fargo Fax. File copies in your location's record-retention file.

TARGET BALANCE ACCOUNT SERVICE DESCRIPTION



- 1. Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Payment Authorization Service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
- 2. Description of Service.** If Company maintains multiple accounts at Bank, Company may designate in writing one such account as its "Principal Account" and one or more additional accounts as "Target Balance Accounts". For each Target Balance Account, Company will separately specify to Bank in writing the Ledger Balance or Collected Balance which Company wishes to maintain in such account (the "Target Balance"). At the end of each Business Day, Bank will determine the applicable balance on deposit in each Target Balance Account. If the applicable balance in a Target Balance Account exceeds its Target Balance, Bank will transfer from the Target Balance Account to the Principal Account such funds as are necessary to bring the applicable balance to the Target Balance. If the applicable balance is less than the Target Balance, Bank will transfer from the Principal Account to the Target Balance Account such funds as are necessary to bring the applicable balance to the Target Balance. Bank may, but will not be required to, transfer funds if the transfer would create an overdraft or exceed the Collected Balance then on deposit in the Principal Account.

WHOLESALE LOCKBOX SERVICE DESCRIPTION

WELLS
FARGO

1. **Introduction.** This Service Description is part of the applicable documentation ("Service Documentation") governing the Wells Fargo Bank, N.A. ("Bank") Wholesale Lockbox service ("Service"). For treasury management relationships governed by Bank's Master Agreement for Treasury Management Services, the Service Documentation includes the Acceptance of Services, and "Company" is the company identified in the Acceptance of Services. For treasury management relationships governed by Bank's Deposit Agreement and Disclosures for Commercial Accounts, the Service Documentation includes the related Depository Authorization & Agreement Certificate and/or Signature Card, as applicable (each an "Authorization Certificate"), and "Company" is the company identified in the Authorization Certificate. As used in this Service Description, the term "Master Agreement" refers to either Bank's Master Agreement for Treasury Management Services or Bank's Deposit Agreement and Disclosures for Commercial Accounts, as applicable.
2. **Scope of Service.** The Service covers the processing of (i) checks and other instruments submitted in payment of obligations to Company ("Remittances" or "Checks") and (ii) written authorizations to charge payments due Company to the payors' credit cards ("Charge Authorizations"). However, processing of Charge Authorizations is not available at all processing sites. To the extent Company is not using the Service to process Charge Authorizations, the references to Charge Authorizations throughout this Service Description will not apply to Company.
3. **Commencement of Service.** The Service will start on the date separately agreed to by Bank and Company if the following events have occurred before such date:
 - 3.1. The United States Postal Service has assigned the Lockbox (as defined in Section 4 below) to Company with the number and at the address specified by Bank to Company;
 - 3.2. The Account (as defined in Section 6 below) has been opened and is in good standing;
 - 3.3. Company has designated to Bank in writing the processing options selected by Company for the Service; and
 - 3.4. Company has provided to Bank such other information and documents as Bank requests to enable Bank to commence and operate the Service for Company and to enable Bank to comply with its other obligations under this Service Description.
4. **Lockbox.** Company will direct its customers to mail Remittances and (if applicable) Charge Authorizations to the post office box identified in Company's Lockbox Service Set-up Form, or otherwise identified in writing to Company by Bank (the "Lockbox"). Bank (including any subcontractor of Bank) will have exclusive access to the Lockbox. Bank will give appropriate instructions concerning the Lockbox to the United States Post Office where the Lockbox is located.
5. **Processing Lockbox Mail.** Each Business Day (a day on which Bank is open to conduct its regular banking business, other than a Saturday, Sunday or public holiday), Bank or its subcontractor will pick up at, and transport from, the Lockbox to the processing site or sites designated by Bank (each a "Processing Site") the Remittances and Charge Authorizations

addressed to the Lockbox. Except as otherwise specifically provided in this Service Description, Bank or its subcontractor will open the Remittances and Charge Authorizations and process them in accordance with the lockbox processing procedures set forth in this Section 5 (the "Processing Procedures"). Company agrees to instruct its customers and other obligors not to send cash to the Lockbox.

5.1. Disposition of Remittances, Charge Authorizations, and Remittance Materials.

On each day Bank offers the Service, Bank will collect from the Lockbox the envelopes and other contents of the Lockbox. Bank will open the envelopes and determine whether they contain any Charge Authorizations, Remittances, remittance statements, invoices, correspondence, cash, papers, documents, or other items. Unless otherwise requested by Company and agreed to by Bank, if cash is sent with any remittance materials the cash will be removed from the envelope containing the remittance materials and a credit advice of the amount of the cash will be placed in such envelope with the remainder of the envelope's contents. Except as otherwise specifically provided in these Processing Procedures or elsewhere in this Service Description, or as specifically requested by Company and agreed to by Bank, Bank will not reconcile the Remittances, Charge Authorizations, cash or other items in the envelopes to invoices, to remittance statements, or to any other documents or papers in the envelopes or elsewhere. Bank will process any Remittances, Charge Authorizations and any cash in the envelopes as provided in these Processing Procedures.

5.2. Document Identification, Imaging, and Data Capture. Bank or its subcontractor will, if requested (i) print an audit trail identification number on each of the checks it processes, (ii) image all Remittances, Charge Authorizations, remittance stubs and correspondence included among the remittance materials.

5.3. Checks Not to Be Deposited. Unless otherwise requested by Company and agreed to by Bank, Bank will not deposit Checks falling into any of the following four categories, or Checks which Company has specifically instructed Bank in writing not to deposit.

5.3.1. Unacceptable Payees. Checks on which the name or designation of the payee is not the name or designation specified by Company to Bank for acceptable payees or a reasonable variation (in Bank's opinion) of such name or designation.

5.3.2. Postdated and Staledated Checks. Checks which are postdated three or more days after the date they are collected from the Lockbox, postdated Checks that in Bank's opinion would not be paid on presentation, and Checks dated six (6) months or more prior to the date they are collected from the Lockbox.

5.3.3. Indeterminable Amount. Checks on which the correct amount of the Check cannot be determined from the Check and the documents accompanying the Check, or Checks on which the numerical and written amounts are not the same and the envelope containing the Check did not contain an invoice or a Remittance statement (or, if such were included, the amount of the invoice or Remittance statement did not match either the numerical or written amount on the Check).

5.3.4. Alterations. Checks with alterations, ~~provided, however, that Bank will only use reasonable efforts to catch such alterations and prevent deposits. As a result, Bank will have no liability whatsoever, despite anything to the contrary in~~

~~the Lockbox Agreement, for its deposit of any Check containing an alteration, unless the deposit results directly from the willful misconduct of Bank's officers or employees.~~

5.4. Checks to Be Deposited. Unless Company specifies otherwise in writing to Bank, Checks which do not fall into one of the four categories listed in Section 5.3 above will be deposited in the Account as provided in Section 5.7 below, and Checks falling into either of the following two categories will be deposited in the Account after being processed as provided below, unless they also fall into one of the four categories listed in Section 5.3 above, in which case they will not be deposited.

5.4.1. Discrepancies in Amount. Checks on which the numerical and written amounts are not the same, in which case the amount deposited will be that amount which corresponds to the amount on the invoice or Remittance statement enclosed in the envelope with the check. If the numerical and written amounts on any Check are the same, but do not correspond to the amount on the invoice or Remittance statement enclosed in the envelope with the Check, the Check amount will be deposited.

5.4.2. Missing Date. Checks which are not dated, in which case the Check will be deposited after being dated by Bank as of the date it is collected from the Lockbox.

5.5 Foreign Checks. If Company so desires, Bank will deposit and process certain Checks drawn on a foreign bank or payable in a currency other than United States Dollars, so long as the both the country in which the foreign bank is located and the currency in which the Check is payable currently appear on that certain list, announced by Bank from time to time, of foreign bank locations and currencies for which Bank is willing to process Checks. Foreign Checks not meeting these criteria will not be deposited.

5.6. Restrictive Notations. Bank will not inspect checks to determine whether they bear restrictive notations, such as "Paid in Full". ~~Bank will have no liability whatsoever, despite anything to the contrary in this Service Description, for depositing or otherwise handling any check bearing a restrictive notation in accordance with these Processing Procedures, regardless of whether Bank has knowledge of such restrictive notation.~~

5.7. Deposits of Checks and Cash. During each Business Day, Bank will make deposits of the acceptable Checks and cash received in the Lockbox by crediting the Account for the amount of such Checks and cash. Checks and cash received and processed on any day which is not a Business Day will be deposited to the Account on the next succeeding Business Day. Except as otherwise specifically provided in this Service Description, the normal and customary laws, rules, practices and procedures for handling deposits to checking accounts will apply to these Processing Procedures and the Service.

5.8. Changes in Names or Designations of Payees. Company may at any time upon ten (10) calendar days advance notice to Bank request that a name or designation on Company's list of payees sent to Bank be deleted or added, and Bank will add or delete the name or designation if the request is acceptable to Bank.

5.9. Eligibility Requirements for Processing Charge Authorizations. In order to be eligible for processing by Bank, a Charge Authorization received in the Lockbox must contain the name of the account debtor, the account debtor's credit card number, the

expiration date, the three digit security code, and the amount of the payment authorized, all of which must be written or imprinted on the authorization form in a reasonably legible manner. If any one of these items of information is missing from a Charge Authorization, or is, in the sole judgement of Bank or its subcontractor, not sufficiently legible for processing purposes, the Charge Authorization will not be processed, and will be forwarded to Company as set forth below.

- 5.10. Processing Charge Authorizations for Approval.** Bank will proceed to process for approval each Charge Authorization received in the Lockbox which contains the information required in Section 5.9 above and is otherwise eligible for processing. Bank will seek approval from the issuer of the applicable credit card for the payment transaction set forth on the Charge Authorization. Bank will submit for settlement each Charge Authorization approved in this manner.
- 5.11. Settlement Report for Charge Authorizations.** Following processing of Charge Authorizations for approval, Bank will segregate those Charge Authorizations which are approved from those Charge Authorizations which are declined. Bank will generate a settlement report for all approved Charge Authorizations and will make it available to Company in the manner mutually agreed upon during implementation of the Service.
- 5.12. Imaging.** Bank or its subcontractor will electronically image checks, Charge Authorizations, remittance statements and correspondence received in the Lockbox. Company acknowledges and agrees that the images are not works made for hire and are the property of Bank and not of Company.
- 5.13. Truncation of Remittance Materials.** Company understands that any original remittance statements, invoices, coupons, correspondence and other remittance materials that are imaged by Bank pursuant to this Service Description will be destroyed by Bank ten (10) calendar days after they are imaged. Therefore, Company must notify Bank of any issues which require inspection of original remittance materials prior to expiration of such ten (10) day period.
- 5.14. Transmission of Information from Processed Remittances and Charge Authorizations.** Each Business Day that Bank offers the Service, Bank will electronically transmit to Company, in accordance with the transmission method and file format agreed upon between Bank and Company, information from processed Remittances and Charge Authorizations, including credit card transaction data, and each settlement report applicable to approved Charge Authorizations.
- 5.15. Mailing Undeposited Checks and Unimaged Remittance Materials to Company.** Unless otherwise specified by Company in writing to Bank, Bank will mail to Company, in accordance with the terms of this Service Description, (i) any remittance statements, invoices, correspondence, papers, and other documents enclosed in each envelope sent to the Lockbox which are not imaged in accordance with this Service Description, and (ii) any Checks enclosed in such an envelope which are not deposited in accordance with these Processing Procedures.
- 5.16. Nil Report.** On any Business Day when Bank collects no cash or Checks from the Lockbox, Bank will send Company a statement to that effect if Company so requests.
- 6. Account.** Company will maintain a deposit account with Bank, which Company will designate in the Lockbox Service Set-up Form or otherwise in writing, to which Bank or its subcontractor will (i) deposit Remittances received through the Lockbox, and (ii) credit amounts attributable to settlement of Charge Authorizations received through the Lockbox, throughout the term of

the Service (the "Account"). Company understands that this Service Description covers the lockbox service to be provided by Bank and, except as specifically provided in this Service Description, does not cover the handling of the Account or the processing of checks drawn on the Account. Except as otherwise specifically provided in this Service Description, the Account will be handled and checks drawn on the Account will be processed by Bank as Bank would perform such responsibilities with respect to any other demand deposit account at Bank. As a result, the Account will be subject to, and Bank's operation of the Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Account (the "Account Agreement"), a copy of which Company acknowledges having received.

7. **Deposits and Confirmations.** Company authorizes Bank to endorse Remittances received at the Lockbox, and to deposit them into the Account as provided in the Processing Procedures. If any payee of a Remittance received in the Lockbox is a legal entity other than Company, Company represents and warrants to Bank that Company has the proper authorization from the payee to have the Remittance endorsed for deposit, and deposited, into the Account, and Company agrees to indemnify Bank against any losses, liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees (collectively, "Losses and Liabilities") suffered or incurred by Bank as a result of, or in connection with, Company's failure to have proper authorization. Company also authorizes Bank to process and settle Charge Authorizations received at the Lockbox, and to cause the amounts received on account of settlements of such Charge Authorizations to be credited to the Account as provided in the Processing Procedures. Bank will provide to Company an advice of deposits and other credits made to the Account. Company agrees to notify Bank's customer service center, whose address and telephone number is available upon request from Bank, (i) of any error in an advice of deposit within fourteen (14) calendar days after Company receives such advice of deposit and (ii) of any error in a bank statement, or of any failure of a bank statement to show a deposit that should have been made during the period covered by the statement, within thirty (30) calendar days after Company receives such bank statement. ~~The liability of Bank for such errors is limited as provided in Section 17 of this Service Description.~~

8. **Access to Lockbox Images.** The Service will allow Company to enter a website hosted by Bank or its subcontractor (the "Website") for the purpose of accessing archival images of Charge Authorizations, Remittances and other remittance materials processed through the Lockbox, and giving Bank or its subcontractor certain types of instructions with regard to the processing of such remittance materials. Company agrees to use the Website only in accordance with this Service Description and any notices and information posted on the Website (collectively, the "Website Use Documentation"). Persons entering the Website for Company (the "Users") must also accept any "terms of use" for the Website which appear on the Website when a User initially logs on.

9. **Security Procedures.**

9.1. Bank or its subcontractor will provide each User with a multi-factor authentication compliant access method (which may consist of a combination of user names, passwords, passphrases, digital certificates and/or tokens) to be used whenever the User enters the Website.

9.2. It is Company's responsibility to ensure that any user names, passwords, passphrases, digital certificates and tokens provided in connection with use of the Website (collectively, "Security Devices") are known to, and used only by, persons who have been properly authorized by Company to access the Website and use the Service through the Website.

- 9.3. FAILURE TO PROTECT SECURITY DEVICES MAY ALLOW AN UNAUTHORIZED PARTY TO (1) USE THE SERVICE, (2) CORRECT, CHANGE, VERIFY, OR SEND DATA USED WITH THE SERVICE, (3) SEND INFORMATION AND COMMUNICATIONS TO, OR RECEIVE INFORMATION AND COMMUNICATIONS FROM, BANK OR (4) ACCESS COMPANY'S ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA. ALL ENTRIES INTO THE WEBSITE, ALL COMMUNICATIONS SENT, AND ALL USES OF THE SERVICES, THROUGH COMPANY'S SECURITY DEVICES WILL BE DEEMED TO BE ENTRIES, USES, AND COMMUNICATIONS AUTHORIZED BY COMPANY AND SHALL BE BINDING UPON COMPANY. ~~COMPANY ASSUMES THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF ALL SECURITY DEVICES.~~ Company acknowledges the importance of developing internal procedures to limit such risk, which procedures will include, at a minimum, (a) notifying Bank immediately when any new person becomes a User or when any existing User stops being a User, (b) disabling access to the Website immediately for each User who stops being a User, and (c) not keeping, in any form or in any place, lists of Security Devices. JL
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- 9.4. Company agrees to notify Bank immediately when Company becomes aware of any loss or theft of, or any unauthorized use of, any Security Device. Company also agrees to notify Bank immediately when Company becomes aware of any unauthorized entry into the Website.
10. **Use of Certain Software to Access the Website.** In using the Website, Company will be sending financial and other data as well as electronic messages directly to Bank or Bank's subcontractor through the Internet. Company acknowledges that when the Internet, or other electronic communications facilities, are used to transmit or receive data and messages, the data and the messages may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, Company agrees to transmit and receive data and messages through the Website using only software, including, but not limited to, browser software, or other access devices that support the Secure Socket Layer (SSL) protocol or other protocols required by, or acceptable to, Bank, and to follow the log-on procedures established by Bank or its subcontractor that support such protocols.
11. **Restricting or Terminating Access to the Website.** In addition to, and not in substitution for, any provision in this Service Description or the other Service Documentation, Company understands and agrees neither Bank nor its subcontractor will in any way be obligated to permit Users access to the Service through the Website if (a) such use or access is inconsistent with any term or condition applicable to the Service or the Website or to the information to be accessed, (b) such use or access is not permitted by applicable state or federal law or regulation, (c) Bank has reasonable cause to believe that such use or access may not be authorized by Company or any third person whose authorization Bank believes is necessary for such use or access, or (d) Bank has reasonable cause to deny such use or access for Company's protection or the protection of Bank or Bank's subcontractor. If the Service cannot be used through the Website, Bank will make reasonable efforts for the Service to be used by other means. ~~Neither Bank nor its subcontractor shall have any liability to Company for any losses or damages Company may suffer or incur as a result of any such termination.~~ JL
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12. **Intra-Day Image Access.** Company understands that any images which it accesses on an intra-day basis may not be final, and are subject to further value-added keying. Therefore, Company expressly assumes all risk associated with Company's use of such intra-day images.

13. **Decisioning Module.** If Bank's decisioning module is available to Company, and Company elects to use it in connection with the Service, Company will be able to send instructions through the Website to Bank or its subcontractor as to how to process certain Remittances or Charge Authorizations which Bank classifies as either "processable suspend" or "unprocessable" (collectively, the "Unprocessable Items"). Company will have several options for instructions, as agreed upon in advance by Bank and Company. Such options may include one or more of the following: (i) apply the Unprocessable Item to a specific customer account, (ii) apply the Unprocessable Item to Company's suspense account, (iii) reject the Unprocessable Item and have it placed in Company's reject package, or (iv) direct Bank to issue a letter of pre-arranged content to the remitter of the Unprocessable Item. Each message related to the processing of an Unprocessable Item (a "Decisioning Instruction") must be received by Bank or its subcontractor by the cutoff time for deposit or processing of such item which Bank and Company have mutually agreed upon during implementation of the Service. If no Decisioning Instruction is received by the specified deadline, the Unprocessable Item will be handled in accordance with the Processing Procedures or any other standing instructions applicable such items. ~~Bank will have no liability or responsibility whatsoever for any keying errors, Company system issues, or misapplied payments resulting from Company's Decisioning Instructions.~~

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established in
Exhibit D to
the Fiscal
Agent Agreement

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14. **Customer Service.** Any questions or problems that Company has with respect to the Service should be addressed to Bank's customer service center at the telephone number and address separately disclosed to Company.

15. **Claims, Legal Progress and Notices.** If Bank receives any claim, notice, legal process or court order relating to the Charge Authorizations, the Remittances, the Lockbox or the Account, Bank will comply with it if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.

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~~16. **Indemnification.** Company agrees to indemnify Bank and its officers, directors, employees, agents and subcontractors (collectively, "Indemnified Parties") and hold each of the Indemnified Parties harmless from and against any and all losses, liabilities, claims, damages, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees (collectively, "Losses and Liabilities") which any one or more of the Indemnified Parties suffers or incurs in relation to (i) the processing of Charge Authorizations, (ii) any keying errors, Company system issues, or misapplied payments resulting from Company's Decisioning Instructions, or (iii) any action taken by Bank or its subcontractor in response to a Decisioning Instruction, except to the extent that any such Losses and Liabilities are directly caused by Bank's gross negligence or willful misconduct.~~

~~17. **Limitation of Liability.** Company understands and agrees that, absent manifest evidence of fraud, Bank is entitled to assume that each Charge Authorization received at the Lockbox is legitimate and duly authorized by the account debtor purporting on its face to give the Charge Authorization, and Bank will have no liability for processing such Authorization in accordance with the Processing Procedures. In addition to the other limitations on Bank's liability contained in the Master Agreement, if Company incurs a material loss which results directly from Bank's or its subcontractor's negligence or breach in performing the Service and (i) if such negligence or breach is a failure to deposit any check which should have been deposited or to process any Charge Authorization which should have been processed, pursuant to this Service Description, the liability of Bank and its subcontractor shall be limited to direct money damages in an amount not to exceed interest on the amount of the check or the amount of the payment authorized under the Charge Authorization at a rate equal to the cost of funds (at a reserve adjusted daily interest rate which Bank will determine in good faith) for the time period such amount is not in the Account, which time period for the purpose of calculating the interest will not extend beyond the end of the thirty (30) calendar day notice period referred to in~~

~~Section 7 of this Service Description, and (ii) if such negligence or breach results from any other action or failure to act by Bank or its subcontractor, the liability of Bank and its subcontractor shall, unless otherwise provided by any law which cannot be varied by contract, be limited to direct money damages in an amount not to exceed the lesser of (A) three (3) times all the Service Fees charged or incurred in relation to the Service during the calendar month immediately preceding the calendar month in which the loss occurred (or, if no such fees were charged or incurred in the preceding month, such fees charged or incurred in the month in which the loss occurred), or (B) Two Hundred Thousand Dollars (\$200,000.00).~~

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18. **Termination.** Upon termination of the Service, Bank will (i) close the Lockbox, and (ii) dispose of the mail addressed to the Lockbox in the manner instructed by Company for a period of three (3) months after the termination date, unless arranged otherwise between Company and Bank, with Service Fees with respect to such disposition based on Bank's estimate being prepaid directly to Bank at the time of such termination in immediately available funds or by another payment method acceptable to Bank in its sole discretion.
19. **Assignment.** Notwithstanding anything to the contrary in the Agreement, the rights and obligations of Bank with respect to the Service shall be assignable to any successor in interest without restriction.
20. **Instructions.** Bank is authorized to act on any instructions received by Bank if (i) such instructions purport to be made in the name of Company, (ii) Bank reasonably believes that they are so made, and (iii) they do not conflict with the terms of this Service Description, including, but not limited to, the Processing Procedures, as such terms may be amended from time to time, unless the conflicting instructions are supported by a court order.
21. **Authorized Persons.** Any person identified by Company in the Lockbox Service Set-up Form or any certification, notice or other communication delivered to Bank may receive information, communications and notices regarding the Service, and is authorized to transact all business, make all agreements and sign and deliver all documents in connection with the Service. If the identity of such a person changes Company will promptly notify Bank in writing. Bank will have a reasonable time after receipt of a certification, notice or other communication to act on it.
22. **Software, Hardware and Backup Requirements.** Upon notice from Bank of a failure of any software, hardware or other equipment necessary for Bank to perform in accordance with this Service Description, Company will as soon as reasonably possible deliver to Bank all data in Company's possession or under its control which Bank reasonably requests in order for Bank to continue to provide the Service.
23. **Survival.** Sections 7, 9, 11, 12, ~~16, 17~~ and 23 of this Service Description will survive termination of the Service.
24. **Terminology.** As used in this Service Description and in the Master Agreement as applied to this Service, "negligence" will mean a material failure to use that degree of care that would be used under the same or similar circumstances by a national banking association having substantially the same volume and type of lockbox activity and approximately the same number, size and diversity of lockbox customers.

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AMENDMENT TO THE AGREEMENT FOR AMERICAN EXPRESS CARD
ACCEPTANCE BETWEEN AMERICAN EXPRESS TRAVEL RELATED SERVICES
COMPANY, INC. AND THE STATE BOARD OF FINANCE ON BEHALF OF THE
STATE OF NEW MEXICO

This Amendment (“Amendment”) is by and between The State Board of Finance, on behalf of the State of New Mexico (*Board, you or your*) and American Express Travel Related Services Company, Inc. (*American Express, we, our or us*). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Agreement for American Express Card Acceptance Agreement (*Agreement*).

WHEREAS, Board and American Express have entered into an Agreement effective as of December 1, 2012;

WHEREAS, Board entered into a Fiscal Agent Banking Services Contract (*Fiscal Agent Agreement*) with Wells Fargo (*Wells Fargo*) effective May 1, 2010 which will expire on April 30, 2014;

WHEREAS, the Board anticipates entering a new Fiscal Agent Banking Services Contract (*New Fiscal Agent Agreement*) with Wells Fargo effective May 1, 2014 and with an initial term expiring April 30, 2016;

WHEREAS, Board and American Express desire to amend the Agreement as set forth herein so that the Agreement and the New Fiscal Agent Agreement shall terminate on the same date.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereto hereby agree as follows:

1. Section 6 a. of the Agreement (Effective Date/Termination Date) is amended to read as follows:

a. Effective Date/Termination Date. The Agreement begins on the Effective Date and shall run concurrently with the fiscal agent agreement between you and Wells Fargo, which began on May 1, 2010 and shall expire on May 1, 2014 (*Fiscal Agent Agreement*), provided that if the Fiscal Agent Agreement is terminated prior to May 1, 2014 pursuant to its terms, then this Agreement shall run concurrently with any successor fiscal agent agreement you enter through May 1, 2014 (*Initial Term*).

Further, the Agreement shall run concurrently with the fiscal agent agreement between you and Wells Fargo, which shall begin on May 1, 2014 and shall expire on April 30, 2016 (*New Fiscal Agent Agreement*), provided that if the New Fiscal Agent Agreement is terminated prior to April 30, 2016 pursuant to its terms, then this Agreement shall run concurrently with any successor fiscal agent agreement you enter through April 30, 2016 (*First Renewal Term*). After the First Renewal Term, the Agreement may be renewed for additional periods (*Renewal Terms*) if mutually agreed to by the parties, but in no event

shall the Agreement be extended beyond December 1, 2016. The Agreement may be terminated by either party by written notice given to the other at least 180 days prior to the end of the Initial Term, First Renewal Term, or any Renewal Term. If any fiscal agent agreement is terminated and you do not enter into a successor fiscal agent, then you may terminate this Agreement by providing at least thirty (30) days prior written notice to us. The Initial Term, First Renewal Term, and any Renewal Terms shall be collectively referred to herein as the "Term."

Except as specifically amended by this Amendment, all terms and conditions of the Agreement shall remain unchanged and in full force and effect. This amendment will become effective on May 1, 2014 or upon approval by the State Purchasing Agent, whichever is later (*Effective Date*).

IN WITNESS WHEREOF, the parties have caused their respective authorized representatives to execute this Amendment as of the Effective Date.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

STATE BOARD OF FINANCE ON BEHALF OF THE STATE OF NEW MEXICO

By:



Name: Marty Shugarts

Title: Vice President

Date: September 15, 2013

By: 

Name: Stephanie Schardin Clarke

Title: Director

Date: 10/9/13



AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE

The Agreement is by and between American Express Travel Related Services Company, Inc., a New York corporation, and the State Board of Finance, on behalf of the State of New Mexico. The Agreement shall be effective as of December 1, 2012 or the date approved by the New Mexico Purchasing Agent of the State Purchasing Division of the General Services Department set forth below, whichever is later (*Effective Date*). The parties agree as follows:

General Provisions

1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS

a. Scope of the Agreement. The Agreement governs your acceptance of American Express Cards in the United States. The Agreement covers you *alone*. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. Other Parts of the Agreement.

i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our Merchant Services representatives (telephone: 1-800-528-5200). We may charge you a fee for each copy that you request.

ii. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

c. Definitions. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated in section 1.a of Schedule A for ease of reference. Some definitions that appear in the Merchant Regulations are amended in section 1.b of Schedule A.

d. Participating State Entities. Exhibit 1 contains a list of certain Participating State Entities, and you must promptly notify us in writing of any changes to that list, provided that no State Entity may be added or deleted without our prior written consent. You and we acknowledge that we may notify the Participating State Entities listed in Exhibit 1 that this Agreement has been entered into between you and us, and that the terms of this Agreement shall govern their continued acceptance of the Card as of the Effective Date. You and we further acknowledge that we may refer any request for a copy of this Agreement made by a Participating State Entity to you.

2. ACCEPTING THE CARD

a. Acceptance. You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for the performance by your Establishments of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

b. Transaction Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

i. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit that comply with our Technical Specifications, as described in the Merchant Regulations. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.

ii. Authorization. For every Charge, you must obtain from and submit to us an Authorization Approval code. An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.

iii. Submitting Charges and Credits. Your Establishments must submit Charges and Credits only in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.

iv. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you or debiting your Bank Account, or we may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.

v. Protecting Cardmember Information. You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

3. PROTECTIVE ACTIONS

a. Creating a Reserve. Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve. If we believe that we need to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this section 3 of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Other Agreement, or to Cardmembers. Upon the occurrence of an event described in section 3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount proportional to the risk covered by such event. If we are unable to establish a Reserve for any reason, including your failure to deposit funds or other collateral with us as set forth in this section 3.a, then we may immediately terminate the Agreement. If we inform you that we are establishing a Reserve, you may terminate the Agreement upon providing at least thirty (30) days prior written notice to us; provided, that you shall remain liable for all amounts owed by you to us under the Agreement as of the effective date of such termination.

b. Trigger Events for Reserve. Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of section 3.e of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

c. Application of Reserve. We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Participating State Entities owe us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys' fees and our costs of handling Disputed

Charges; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys' fees.

d. Other Protections. We may take other reasonable actions to protect our rights and rights of any of our Affiliates, including changing the method of payment for Charges, exercising Chargeback under any of our Chargeback programs, or charging you fees for Disputed Charges as set forth in the Merchant Regulations. In addition to the foregoing, we may change your speed of payment upon the mutual agreement of the parties.

e. Providing Information. You must provide to us promptly, upon request, information about your and your Participating State Entities' finances, creditworthiness, and operations, including the most recent certified financial statements.

4. NOTICES

a. Delivery and Receipt. Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (*e-mail*); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

b. Our Notice Address. Unless we notify you otherwise, you shall send notices to us at:

American Express Travel Related Services Company, Inc.
P.O. Box 53773
Phoenix, AZ 85072
Attn: Department 87
E-mail: American.Express.Contract.Keying@aexp.com
Fax: (602) 744-8413
Tel: (800) 528-5200

With a copy to:

American Express Travel Related Services Company, Inc.
3 World Financial Center
200 Vesey Street, 49th Floor
New York, NY 10285
Attn: General Counsel's Office / Merchant Services Practice Group

c. Your Notice Address. You must notify us immediately of any change in your notice address. Unless you notify us otherwise, we shall send notices to you at:

New Mexico State Board of Finance
181 Bataan Memorial Building
Santa Fe, NM 87501
Attn: Stephanie Schardin Clarke, Director
E-mail: Stephanie.schardin@state.nm.us

5. LIMITATION OF LIABILITY

IN NO EVENT SHALL A PARTY OR ITS RESPECTIVE AFFILIATES (IN OUR CASE), PARTICIPATING STATE ENTITIES (IN YOUR CASE), SUCCESSORS, OR PERMITTED ASSIGNS (AND IN OUR CASE, OUR THIRD PARTY LICENSEES) BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU NOR WE WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM, EXCEPT THAT OUR RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

6. TERM AND TERMINATION

a. Effective Date/Termination Date. The Agreement begins on the Effective Date and shall run concurrently with the fiscal agent agreement between you and Wells Fargo, which began on May 1, 2010 and shall expire on May 1, 2014 (*Fiscal Agent Agreement*), provided that if the Fiscal Agent Agreement is terminated prior to May 1, 2014 pursuant to its terms, then this Agreement shall run concurrently with any successor fiscal agent agreement you enter into through May 1, 2014 (*Initial Term*). After the Initial Term, the Agreement may be renewed for additional periods (*Renewal Terms*) if mutually agreed to by the parties, but in no event shall the Agreement be extended beyond December 1, 2016. The Agreement may be terminated by either party by written notice given to the other at least 180 days prior to the end of the Initial Term or any Renewal Term. If the Fiscal Agent Agreement is terminated prior to May 1, 2014, and you do not enter into a successor fiscal agent agreement, then you may terminate this Agreement by providing at least thirty (30) days prior written notice to us. The Initial Term and any Renewal Terms shall be collectively referred to herein as the "Term".

b. Grounds for Termination. In addition to the termination rights in sections 3.a and 6.a of the General Provisions, if you engage in any activities that harm our business or the American Express Brand, without waiving our other rights and remedies, we may terminate the Agreement immediately upon written notice to you. If we determine or have reason to believe, in our sole discretion, that you are involved (or knowingly participate or have participated) in a fraudulent or illegal business activity, we may terminate the Agreement immediately without prior notice to you. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

c. Termination for Breach. If a party commits a material breach of the Agreement (other than as specified in the preceding subsection), without waiving its other rights and remedies, the other party has the right to send the breaching party a notice specifying the breach and providing the breaching party an opportunity to cure the breach within a period of time no less than thirty days (*Cure Period*). If the breach is not cured within the Cure Period, then the non-breaching party has the right to terminate the Agreement by notice to the breaching party, with termination to be effective not less than ten days following the end of the Cure Period.

d. Post-Termination. If the Agreement terminates, without waiving our other rights and remedies, we may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.

e. Effect of Termination. Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

7. DISPUTE RESOLUTION

a. Asserting a Claim. All Claims will be resolved in accordance with this section 7. In the event of any Claim, you and we will use commercially reasonable efforts to settle the Claim. To this effect, the party asserting the Claim will provide notice thereof to the other party, and they will meet and negotiate with each other and, recognizing their mutual interests, attempt, in good faith, to reach a solution satisfactory to both parties. If they do not reach a solution within a period of sixty days from the first meeting of the parties in negotiation, then the parties will attempt to settle the Claim through mediation, as described in subsection 7.b below.

b. Mediation. Any Claim that has not been resolved pursuant to section 7.a above shall be resolved, upon the election by you or us, through mediation administered by an Entity or organization as mutually agreed by the parties. The parties shall share equally in the costs of mediation, provided however, that your obligation as to costs is subject to sufficient authorizations and appropriations, as determined by you in your sole discretion and in no event will we be responsible for your costs. If they do not reach a solution within a period of sixty days from the first meeting of the parties in mediation, then either party may seek to resolve the Claim through litigation, as described in section 8.e below.

c. Individually Named Parties Only. All parties to litigation must be individually named. There is no right or authority for any Claims to be litigated on a class-action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you

and we are specifically barred from doing so, provided however that this provision does not apply to bar the New Mexico Attorney General's Office from bringing any action of any type against us on behalf of the general public. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against us.

d. Application of Provision. For the avoidance of any confusion, and not to limit its scope, this section 7 applies to any putative class action lawsuit that has been filed against us prior to the Effective Date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 1 and 2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

e. Injunctive Relief. Injunctive relief sought to enforce the provisions of section 8.a and 8.b of these General Provisions is not subject to the requirements of this section 7. This section 7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

f. Confidential Proceedings. To the extent not prohibited by applicable law, all offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations or mediations, by either party, its agents, employees, experts or attorneys, or by the mediator, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation.

8. MISCELLANEOUS

a. Confidentiality. To the extent not prohibited by applicable law, you and we, respectively, must keep confidential and not disclose to any non-Affiliated third party the provisions of the Agreement and any information that it receives from the other under the Agreement that is not publicly available, except as provided in the following sentence. If such information is subject to disclosure pursuant to an order, decree, subpoena or other validly issued judicial, administrative or regulatory process (including through requests for information or by oral questions), the receiving party shall use commercially reasonable efforts to promptly notify the other party of such request or requirement so that such other party may seek to avoid or minimize the required disclosure and/or to obtain an appropriate protective order or other appropriate relief to ensure that any information so disclosed is maintained in confidence to the maximum extent possible by the agency or other person receiving the disclosure. In addition, the receiving party shall use its commercially reasonable efforts to cooperate with the other in its efforts to avoid or minimize the required disclosure and/or to obtain such protective order or other relief to protect the information.

Notwithstanding anything to the contrary in the Agreement, to the extent you receive a request under the New Mexico Inspection of Public Records Act ("NMIPRA") for public records, as they are defined under the NMIPRA, that fail to meet any of the enumerated exceptions in section 14-2-1 of the NMIPRA, we acknowledge that you must comply with the request within the statutory time frame if the NMIPRA so requires. We shall not make any claims against you if, in order to comply with the NMIPRA, you make available to the public the provisions of the Agreement or any

information that you receive from us under the Agreement. You acknowledge that we are entering into this Agreement with the understanding that Cardmember Information, as that term is defined in the Agreement, is not the type of information subject to request and disclosure under the NMIPRA.

b. Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

c. Representations and Warranties. To the extent applicable, and, as to the State and any Participating State Entity, to the extent not prohibited by applicable law, you and we, respectively, represent and warrant to the other that: (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; (ii) it is duly qualified and licensed to do business in all jurisdictions in which it conducts business; (iii) it has full authority to enter into the Agreement and all necessary assets and liquidity to perform its obligations and pay its debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on its business or its ability to perform its obligations or pay its debts hereunder; (v) the individual who signs the Agreement on behalf of a party has the authority to bind that party to the Agreement; and (vi) it is a sophisticated business, has negotiated individually each of the material provisions of the Agreement on an arm's length basis with the advice of competent counsel, in order to meet the respective needs of each party, and that no ambiguity in the drafting of the Agreement shall be construed against the drafter. You further represent and warrant to us that: (vii) you are authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement; (viii) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (ix) you have not assigned to any third party any payments due to you under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, and encumbrances other than ordinary sales taxes; (x) all information that you provided in connection with the Agreement is true, accurate, and complete; and (xi) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

d. Compliance with Laws. You and we, respectively, shall comply with all applicable laws and governmental regulations and rules.

e. Governing Law; Jurisdiction. The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New Mexico without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a

transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 *et seq.* (*E-Sign Act*). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein.

f. Interpretation. In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vii) any reference to a website or a URL (or both) refers to its successor website or URL; (viii) all captions, headings, and similar terms are for reference only; and (ix) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

g. Assignment. You shall not assign the Agreement or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement, or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

h. Waiver; Cumulative Rights. Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

i. Savings Clause. Other than as set forth in the last sentence of section 7.d of the General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

j. Amendments. Except as specifically indicated herein, any amendment to the Agreement must be in writing and duly signed by both parties (except that an e-mail does not constitute such a signed writing), provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card.

(1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

(2) Unscheduled Changes. We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

k. Entire Agreement. The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

l. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.c OF THE GENERAL PROVISIONS, WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.

m. No Third-Party Beneficiaries. The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns.

n. Press Releases. Neither party shall issue any press release or make any public announcement (or both) in respect of the Agreement or the other party without the other party's prior written consent.

o. Independent Contractors. You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

p. Counterparty and Facsimile Versions. The parties may execute the Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering the Agreement in the presence of the other party.

q. Equal Opportunity Compliance. We agree to abide by all applicable Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. To the extent required by applicable laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, we agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, age or handicap, be excluded by us from employment with or participation in, be denied by us the benefits of, or be otherwise subjected by us to discrimination under, any program or activity performed under the Agreement. If we are found to be not in compliance with these requirements during the Term of this Agreement, we agree to take appropriate steps to correct these deficiencies.

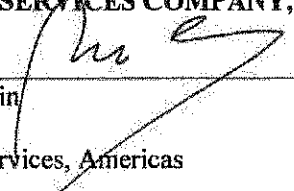
r. Employee Pay Equity Reporting. We agree if we have ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of the Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If we have (250) or more employees we must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, we also agree to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should we not meet the size requirement for reporting at the Agreement award but subsequently grow such that we meet or exceed the size requirement for reporting, we agree to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. We also agree to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of the Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. We further agree that, should one or more subcontractor not meet the size requirement for reporting at the Agreement award but subsequently grows such that they meet or exceed the size requirement for reporting, we will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. We shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. We acknowledge that this subcontractor requirement applies even though we ourselves may not meet the size requirement for reporting and be required to report ourselves. Notwithstanding the foregoing, if the Agreement was procured pursuant to a solicitation, and if we have already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with the Agreement.

A copy of form PE10-249 is attached hereto as Exhibit 3. A copy of form PE250 is attached hereto as Exhibit 4.

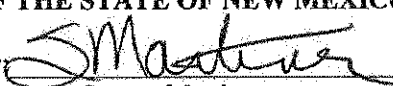
As used in this section 8.r of these General Provisions, the terms "New Mexico Employee" and "employee" shall mean a person working within the State of New Mexico at a New Mexico facility, regardless where the employee legally resides, and regardless of the origin of compensation checks. You agree that the term "subcontractor", as used in this section 8.r of these General Provisions, shall only mean third party companies that we engage for the sole purpose of performing part, or all, of our obligations under this Agreement, and shall not mean any third party vendor with whom we have entered into, or may enter into, an agreement to receive goods and/or services which we utilize in our regular course of business.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute the Agreement as of the Effective Date.

**AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.**

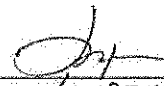
By: 
Ramón Martín
President
Merchant Services, Americas

**STATE BOARD OF FINANCE ON BEHALF
OF THE STATE OF NEW MEXICO**

By: 
Governor Susana Martínez
President
State Board of Finance

Approved by:

**State Purchasing Division
General Services Department**

By: 
Name: LAWRENCE O. MAXWELL
New Mexico Purchasing Agent
Date: 11/29/12



Schedule A
Other Important Provisions for Card Acceptance

1. DEFINITIONS

a. Notwithstanding anything to the contrary in the Agreement, the following definitions appear in the Merchant Regulations and are repeated in this section 1.a of Schedule A for ease of reference only and do not supersede the definitions in the Merchant Regulations:

Agreement means the General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

American Express Card and *Card* mean (i) any card, account access device, or payment device or service bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number.

Cardmember means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

Charge means a payment or purchase made on the Card.

Chargeback (sometimes called "full recourse" or "Full Recourse" in our materials), when used as a verb, means (i) our reimbursement from you for the amount of a Charge subject to such right or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.

Claim means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

Credit means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

Discount means an amount that we charge you for accepting the Card, which amount is: (i) a percentage (*Discount Rate*) of the face amount of the Charge that you submit; or a flat per-Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

Disputed Charge means a Charge about which a claim, complaint, or question has been brought.

Entity means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

General Provisions means the provisions set out in the Agreement other than in the provisions in any other accompanying schedule or exhibit hereto.

Marks mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

Merchant Number (sometimes called the “Merchant ID” or “Establishment” or “SE” number in our materials) means a unique number we assign to your Establishment; if you have more than one Establishment, we may assign to each a separate Merchant Number.

Merchant Regulations means the American Express Merchant Regulations – U.S., which are available at www.americanexpress.com/merchantpolicy and can be accessed by entering your Merchant Number.

Other Payment Products mean any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.

We, our, and us mean American Express Travel Related Services Company, Inc.

b. The definitions in the Merchant Regulations are hereby amended as follows:

(i) The definition of *Affiliate* is hereby deleted in its entirety and replaced with the following:

Affiliate means, with respect to us, any Entity that controls, is controlled by, or is under common control with us, including our subsidiaries. As used in this definition, *control* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (a) the voting securities or (b) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute “control” of the Entity.

(ii) The definition of *you* and *your* is hereby deleted in its entirety and replaced with the following:

You and *your* (sometimes called the “Merchant”, “Service Establishment”, or “SE” in our materials) mean the governmental Entity indicated on the signature page hereof, and the Participating State Entities.

(iii) The following definitions are added:

Participating State Entities means (a) the State Entities listed in Exhibit 1, attached hereto, as may be amended from time to time; and (b) the State Entities that sign an agency participation agreement in the form attached hereto as Exhibit 2.

State Entities means your departments, agencies, institutions, offices, colleges, universities, school districts, counties, cities and other state agencies or units of local government that perform sovereign functions.

(iv) You and we acknowledge that the definition of "State Entities," as set forth in section 1.b.iii of this Schedule A, shall not include: (a) public hospitals, including university hospitals; (b) public convention centers, including conference and exhibition centers; or (c) public transportation systems, including toll and transit authorities.

(v) Any and all references in the Merchant Regulations to Affiliate(s), as it applies to you, are hereby deleted and replaced with references to Participating State Entity(ies).

2. INDEMNIFICATION AND NON-VALIDATION FEES

Any provisions in the Merchant Regulations and Data Security Operating Policy, if any, that by their terms would impose on you (a) any indemnification obligations or (b) assessment of non-validation fees, do not apply to you.

3. PAYMENT FOR CHARGES

We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments. Each month we shall debit your Bank Account for all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit; provided that if we cannot debit your Bank Account for any portion of such amounts, then we may offset such amounts from future payments we would otherwise make to you. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

4. SETTLEMENT

a. Discount and Payment Plan. Your initial Discount and payment plan are set forth below in the table below.

Discount Rate (Non-CPC):	2.35%
Discount Rate (CPC):	2.35%
Prepaid Card Rate:	1.80%
Payment Plan:	2 days

b. Third Party Providers. You acknowledge that you and the State Entities may have the option to contract for American Express Card acceptance through third parties, and that the rates through such third party service providers may differ from the rates under this Agreement.

c. State Entity Participation. Notwithstanding anything to the contrary in the Agreement, you acknowledge that a State Entity will not be covered by this Agreement if it enters into a separate Card Acceptance Agreement with us.

5. ADDITIONAL REQUIREMENTS

You must also comply with the following special provisions. All General Provisions and requirements of the Agreement apply to you as well.

You must provide us with a mutually acceptable letter of endorsement and any assistance as reasonably required.



EXHIBIT 1

PARTICIPATING STATE ENTITIES

The Participating State Entities, as of the Effective Date, are set forth in the table below.

TOWN OF SILVER CITY	CABQ KIMO THEATRE
MUSEUM OF FINE ARTS	CABQ SOUTH BROADWAY CULTURAL
INTERNATIONAL FOLK ART	ALBQ POLICE DWI SEIZURE
PALACE OF THE GOVENORS	CABQ EAGLE ROCK
INDIAN ARTS MUSEUM	RIO RANCHO FINANCIAL SVCS
JEMEZ NATIONAL MONUMENT	RIO RANCHO PARKS & REC
CORONADO NATL MONUMENT	CTY RIO RNCHO UTL IVR
CITY OF LAS VEGAS	CTY RIO RNCHO UTL ONLN PY
CITY OF RIO RANCHO	RR PRKS & REC STAR HGHTS
EASTERN NEW MEXICO UNIV	RR PARKS & REC AQUATICS
NEW MEXICO STATE FAIR	LOMA COLORADO LIBRARY
ALBQ GOLF TRAINING CENTER	MEADOWLARK SENIOR CENTER
ALBQ INTL BALLOON MUSEUM	RIO RANCHO DPS-LAW ENFMNT
ALBQ POLICE DWI SEIZURE	NEW MEXICO JUNIOR COLLEGE
ALBUQUERQUE MUSEUM	CABQ Q CARDS TREASURY MAIN
ALBUQUERQUE PUBLIC LIBRY	CABQ Q CARDS TREASURY ANNX
CABQ ANIMAL CONTROL EAST	CABQ OPEN SPC VISIT CNTR
CABQ ANIMAL CONTROL WEST	CABQ ZOO BIOPARK
CABQ APD EVENTS	CABQ. AQUARIUM
CABQ CERRO COLORADO	CABQ BIOPARK
CABQ CONFERENCES	CABQ GOLF MANAGEMENT
CABQ DON RESERVOIR	RIO RANCHO ANIMAL CNTRL
CABQ MONTESSA PARK	RIO RANCHO COURTS
CABQ PARKING STRUCTURES	RIO RANCHO UTILITIES ONLN
CABQ PARKING STRUCTURES	RIO RANCHO COURTS ONLINE
CABQ PUBLIC SURPLUS	U of NM Casaa Crib
CABQ SWMD ADMIN EDITH	UONM CASHIERS OFFICE
CITY OF ALB AVIATION FUEL	UONM KUNM
CITY OF ALB PARKS & REC	UONM LOBO CASH INTERNET
CITY OF ALB MONTESSA	UONM MAXWELL MUSEUM STORE
CITY OF ALB TRANSIT	UONM TICKETING SERVICES
CITY OF ALB TREAS ANNEX	TAOS COUNTY TREASURER
CITY OF ALB TREASURY	CABQ TRANSIT KIOSK 3
CITY OF ALB WEBSITE	CABQ TRANSIT KIOSK 4
CITY OF ALB LUCKY PAWS	CABQ TRANSIT KIOSK 5
CITY OF ALB LUMINARIA TR	CABQ LOS ALTOS AQUATICS
CITY OF ALB PARKING 8	CABQ SANDIA AQUATICS
CITY OF ALB PLAN PERMITS	CABQ VALLEY AQUATICS

CABQ JERRY CLINE TENNIS CENTER	CABQ HIGHLAND AQUATICS
CABQ WEST MESA AQUATICS	UNM EMS ACADEMY
CABQ TRANSIT KIOSK 1	UNM HOUSING
CABQ AQUATIC INDOOR	UNM HOUSING SVCS WEB
CABQ TRANSIT KIOSK 2	UNM HSLIC
CABQ AQUATICS E SAN JOSE	UNM I.S.N.P.S.
CABQ AQUATICS MONTGOMERY	UNM LOBO CASH
CABQ AQUATIC SIERRA VISTA	UNM LOBO CASH WEB
CABQ AQUATICS WILSON	UNM LOS ALAMOS BRANCH
CABQ AQUATICS EISENHOWER	UNM REC SERVICES
CABQ AQUATICS RIO GRANDE	UNM RECORDS DEPARTMENT
CABQ AQUATICS SUN PORT	UNM SCHOOL OF MEDICINE
CABQ AWD MOBILE ADOP	UNM STUDENT PUBL WEB
New Mexico Magazine Walk in Term	UNM TAOS SUMR WRITERS CO
New Mexico Magazine Product	UNM VALENCIA
New Mexico Magazine Subscription	UNM VALENCIA CAMPUS
New Mexico Mag. PHOTO ARCHIVE	UNM CHAMPIONSHIP COURSE
CORONADO MONUMENT	UNM NORTH GOLF COURSE
JEMEZ MONUMENT	UNM TICKETING SERVICES
MUSEUM OF FINE ARTS	UNM TKT CONTRIBTRAK
MUSEUM OF INTL FOLK ART	UNM ART MUSEUM
MUSEUM OF INDIAN ART/CLTR	UNM BOOKSTORE
PALACE OF THE GOVERNORS	UNM BOOKSTORE ECA
NATL HISPANIC CLTRL CTR	UNM COPY CENTER
Village of Los Lunas Utilities	UNM FUEL CARD
Village of Los Lunas Paint Ball	UNM KNME STORE
Village of Los Lunas Gym	UNM MARKETPLACE
Village of Los Lunas X-PRESS PAY	UNM MAXWELL MUSEUM STORE
CABQ BIOLOGICAL PARK	UNM PARKING SERVICES
CABQ GOLF MGMNT	UNM PARKING SVCS CAT
CABQ SIERRA VISTA TENNIS	UNM PARKING SVCS-INT
CABQ RECREATION BUS OFFIC	UNM SHC PHARMACY
NM HISTORY MUSEUM	UNM STUDENT HEALTH CENTER
ABCWUA NW	UNM STUDENT UNION
UNM TICKETING SERVICES	UNM VALENCIA BOOKSTORE
UNM - DEBORAH JONES	UNM EVENTS & CONFERENCES
UNM LEO MOYA	NM Dept. of Cultural Affairs F AND R
UNM CANCER CENTER	ABCWUS LIVING RIVER FUND
UNM CANCER CTR LOVELACE	UNM SUB GAME ROOM
UNM CASAA CRB	UNM CTR FOR DEV & DSBLTY
UNM CASHIERS WEB PAYMENTS	UNM PARKING METERS
UNM CONTINUING ED WEB	CABQ ZOO EDUCATION
UNM CONTINUING ED	CABQ MAYORS CHARITY GALA
UNM CRLS	NEW MEXICO STATE UNIVERSI
UNM DIV DNTL HYGIENE	NMSU PARKING

UNM EARTHDATA	NMSU GOLF PLAYERS GRILL
NMSU ADVANCEMENT SVCS	
CORBETT CTR STUDENT SVCS	
MNSU GOLF SHOP	
MNSU SPECIAL EVENTS	
PHYSICAL SCIENCE LAB-TAAC	
MNSU PARKING WEB	
New Mexico State University	
UNM BOOKSTORE INT	
UNM PARKING METERS YALE	
NM MAGAZINE WEB-PROD	
UNM TERRA DOTTA	
KUNM RADIO	
UNM HARWOOD MUSEUM OF ART	
NMSU ATHLETICS	
NMSU KRWG ONLINE	
ENMU-CASHIER	
CITY OF ALB AVIATION	
NEW MEXICO STATE FAIR	
New Mexico Military Institute	
SSA - ALBUQUERQUE BIO PK	



EXHIBIT 2

AGENCY PARTICIPATION AGREEMENT
FOR AMERICAN EXPRESS® CARD ACCEPTANCE
[STATE ENTITY]

This Agreement and any attachments hereto (*Agency Participation Agreement*) is between AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. (*we, us or our*), and the [STATE ENTITY] (*you and your*).

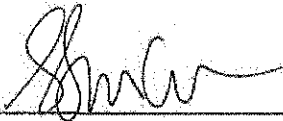
For good and valuable consideration, receipt of which is hereby acknowledged, both parties agree as follows:

1. The terms and conditions of the Agreement for American Express® Card Acceptance between the STATE BOARD OF FINANCE on behalf of the STATE OF NEW MEXICO and us (*Master Agreement*) are incorporated herein by this reference as if fully set forth herein and all references therein to "you" and "your" apply to you. Capitalized terms used but not defined herein have the same meaning as in the Master Agreement, unless specified to the contrary.
2. You agree to accept the Card under the terms of the Master Agreement. You represent that you have received all the necessary approvals from the director of the State Board of Finance or the Local Government Division of the Department of Finance and Administration to allow you to enter into this Agency Participation Agreement.
3. Notwithstanding anything to the contrary contained herein, all terms and conditions of the Master Agreement shall remain unchanged and in full force and effect, and this Agency Participation Agreement shall continue in effect for so long as the Master Agreement is in full force and effect. If the Master Agreement terminates for any reason, this Agency Participation Agreement shall also immediately terminate without further notice.

IN WITNESS WHEREOF, the parties have caused this Agency Participation Agreement to be executed effective as of _____.

[STATE ENTITY]

AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.

By: 
 Name: Stephanie Schardin Clarke
 Title: Director

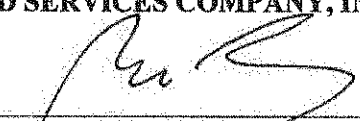
By: 
 Name: Ramon Martin
 Title: President, Merchant Svcs Americas

EXHIBIT 3

(Form PE10-249)

	A	B	C	D	E	F	H	I	J	K	L	M	N	O	P		
1	Emp. ID (Name or Number)	Job Category Number	Gender (m or f)	Full/Part (ft or pt)	Total Annual Compensation (\$)	Total Annual Hours		Job category number to use: 1 - Officers and Managers 2 - Professionals 3 - Technicians 4 - Sales Workers 5 - Office and Admin. Support 6 - Craft Workers (Skilled) 7 - Operatives (Semi-Skilled) 8 - Laborers (Unskilled) 9 - Service Workers									
41																	
42																	
43										Employer to enter data here:							
44								Company Name:									
45								Shipping address line 1:									
46								Shipping address line 2:									
47								City, state, zip code:									
48								Phone:									
49								E-mail address:									
50								FERN number:									
51								EAN number:									
52								SNARE vendor number:									
53								Reporting calendar year:									
54																	
55																	
56								After data entry is complete, SAVE YOUR FILE.									
57								Excel 2007 users: In menu bar click on "Data" then click "Refresh All". RESAVE YOUR FILE									
58								For earlier versions of Excel (1997-2003) refer to "PE10-249 Employee Data Entry Form Instructions" (p2)									
59																	

EXHIBIT 4

(Form PE250)

**New Mexico
Pay Equity Initiative**

**Executive Order Number 2009-049
December 18, 2009**

The Reporting Template below is for information only at this time. The State of New Mexico will provide a spreadsheet template with formulas to be used for automatic calculation of gender pay gaps by October 1, 2011, and for automatic generation of required reports, including the pay band breakdowns in the form below. Appropriate instructions and explanations will be included.

REPORTING TEMPLATE

Form PE250: 250 or More Employees

Job Category	# of Employees Total	# of Men/ % of Men	# of Women/ % of Women	Percentage Pay Gap Between Salaries of Men and Women
Officials and Managers		/ %	/ %	%*
Sub-Band #1**		/ %	/ %	%*
Sub-Band #2**		/ %	/ %	%*
Sub-Band #3**		/ %	/ %	%*
Professionals		/ %	/ %	%*
Sub-Band #1**		/ %	/ %	%*
Sub-Band #2**		/ %	/ %	%*
Sub-Band #3**		/ %	/ %	%*
Technicians		/ %	/ %	%*
Sub-Band #1**		/ %	/ %	%*
Sub-Band #2**		/ %	/ %	%*
Sub-Band #3**		/ %	/ %	%*

PE250 / January 20, 2011

EXHIBIT G

PAYMENT GATEWAY USER AGREEMENT

Wells Fargo Payment GatewaySM User Agreement

IMPORTANT: READ CAREFULLY BEFORE USING THE WELLS FARGO PAYMENT GATEWAY SERVICES OR AGREEING TO THIS WELLS FARGO PAYMENT GATEWAY USER AGREEMENT. ONLY THE CONTRACT ADMINISTRATOR MAY AGREE (OR REFUSE TO AGREE) TO THESE TERMS AND CONDITIONS.

THIS IS A LEGALLY BINDING AGREEMENT.

By agreeing to this document, or otherwise acting to use the *Wells Fargo Payment Gateway* services, operated by Wells Fargo Bank, N.A. ("Wells Fargo") as a licensed reseller of CyberSource Corporation, a California corporation ("CyberSource"), or the products or services offered through the *Wells Fargo Payment Gateway* (including, but, not limited to, 1) payment processing services such as transmission of transactions to the appropriate payment processing network or third party service provider, transaction responses (approved/declined), and the detailed reporting of those transactions for the viewing, managing and usage of merchants and 2) all aspects of the user interface including the virtual terminal and hosted order page) ("Gateway Services"), you, as the end user person or entity ("You" or "Your") agree and consent to the terms and conditions of this User Agreement (the "Agreement"). The Gateway Services may not be provided and no payment transactions may be processed without prior acceptance of the terms of this Agreement. If You do not agree to all of the terms of this Agreement, do not indicate your acceptance of this Agreement and do not use the Gateway Services. CyberSource along with any other third party suppliers providing services related to the Gateway Services shall be collectively referred to as "third party suppliers" herein.

Definitions. As used herein, the following definitions apply:

"Claim" means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any Intellectual Property Right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmatured.

"Confidential Information" means the Gateway API, Documentation, and Operational Procedures, to the extent they are proprietary business information and not subject to inspection under the Inspection of Public Documents Act, and any other information provided to You by Wells Fargo, whether or not such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of Yours; (b) was lawfully obtained by You from a third party free of any obligation of confidentiality; (c) was already in Your lawful possession prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by You without the use of the Confidential Information; (e) is disclosed with the express written permission of Wells Fargo; or (f) is disclosed pursuant to a lawful court or governmental order, provided You provide Wells Fargo with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

"Customer" means Your customer who would like to provide payment for Your goods or services.

"Documentation" means collectively, the operating instructions, user manuals, and help files, in written or electronic form, made available to You by download, and that are intended for use in connection with the Gateway Services.

"Gateway API" shall mean the Gateway software, in object code form, that is licensed to You under this Agreement, that formats, encrypts, and decrypts messages transferred between Your systems and Wells Fargo's systems during the course of You obtaining Gateway Services.

"Intellectual Property Rights" means any and all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights, and any applications for any of the foregoing, in all countries in the world.

"Wells Fargo Parties" means Wells Fargo's and its affiliates' officers, directors, employees, shareholders, agents and attorneys.

"Merchant Account" shall mean an account set up for a merchant that requires a card processor, bank, merchant i.d., terminal i.d., merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account.

"Operational Procedures" means Wells Fargo's published policies and procedures contained in the various documents provided to You, as amended from time to time, concerning the Gateway Services provided pursuant to this Agreement, the terms of which are incorporated in this Agreement as if fully set forth herein.

"Pricing Schedule" means the document setting forth the fees payable by You for use of the *Wells Fargo Payment Gateway* and Gateway Services, which schedule is attached to the Fiscal Agent Agreement and marked as Exhibit C.

"Platform" means the Wells Fargo operated, or approved, electronic payment platform(s) and/or gateway(s) through which the payment services contemplated under this Agreement are provided.

"Service Description" means any addendum hereto which sets forth the details, including any supplemental terms and conditions, related to any optional service obtained as part of the Gateway Services.

"Your Systems" means any web site(s) operated or maintained by You or on Your behalf through which transactions are submitted for processing, and all Your other associated systems.

"Updates" means an embodiment of the Gateway API that provides enhancements and/or improvements.

1. Term, Termination, Pricing and Amendment.

1.1 Term. The term and termination of this Agreement shall be pursuant to the Fiscal Agent Agreement to which it is attached as Exhibit G

1.2 Pricing. The Pricing Schedule is attached to the Fiscal Agent Agreement as Exhibit C.

2. License Grant

2.1 Gateway API License. Subject to the terms of this Agreement, Wells Fargo hereby grants to You (hereinafter including all State agencies and State employees) and You hereby accept, a personal, limited, non-exclusive, non-transferable license and right to the Gateway API and accompanying Documentation during the term of this Agreement for the following purposes: (i) install and use the Gateway API on as many machines as reasonably necessary (which machines are and shall be maintained in facilities owned, occupied or leased by You) to use the Gateway Services for the purpose of selling products and services to Customers; and (ii) use the accompanying Documentation solely for the purpose of installing and using the Gateway APIs; and (iii) create a reasonable number of copies of the Gateway API and Documentation, with all copyright notices intact, for archival purposes only. It is expressly understood that the licenses granted in this Agreement extend to Your affiliates, Your agents, and Your sub-agents in the United States and world-wide who have a need to use the Gateway API system as end-users.

2.2 Documentation License. Subject to the terms and conditions of this Agreement, Wells Fargo hereby grants, and You hereby accept, a non-exclusive, non-transferable limited license, without right of sublicense, to use the Documentation during the term of this Agreement for the sole and limited purpose of supporting Your use of the Gateway API and *Wells Fargo Payment Gateway* service. You shall strictly follow all Documentation provided to You, as it may be amended from time to time by Wells Fargo, in its discretion. To the extent that there is any conflict between the Documentation and the terms of this Agreement, the terms of this Agreement shall govern and control. It is expressly understood that the licenses granted in this Agreement extend to Your affiliates, Your agents, and Your sub-agents in the United States and world-wide who have a need to use the Gateway API system as end-users.

2.3 Use Restrictions. You shall not, and shall not cause or permit any third party to: (i) use the Gateway API in any way, other than in accordance with this Agreement, the Documentation or as otherwise instructed by Wells Fargo in writing; (ii) use the Gateway API or Documentation, either directly or indirectly, to develop any product or service that competes with the products and services provided under this Agreement; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Gateway API, or otherwise apply any procedure or process to the Gateway API in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Gateway API or any algorithm, process, procedure or other information contained in the Gateway API, except as otherwise specifically authorized in accordance with this Agreement; (iv) provide the Gateway API or Documentation to any third party, other than to Your authorized employees, agents, sub-agents and contractors who shall be subject to confidentiality obligations that are no less restrictive than the confidentiality provisions of this Agreement; (v) make any copies of the Gateway API or Documentation, except as is incidental to the purposes of this Agreement, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, assign, sublicense, transfer, distribute, allow access to, or time share the Gateway API or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Gateway API; (ix) attempt to access or actually access portions of the *Wells Fargo Payment Gateway* service not authorized for Your use; or (x) use the Gateway API for any unlawful purpose.

2.4 Ownership of Intellectual Property Rights.

(a) Gateway API. Wells Fargo and/or its licensors shall retain all right, title and interest in and to the Gateway API and Documentation, and any and all Intellectual Property Rights embodied therein or associated therewith, and You shall have no rights thereto except as expressly set forth herein.

(b) Modifications and Derivative Works. Wells Fargo and/or its third party suppliers shall own all right, title, and interest in any modifications, derivatives, improvements, enhancements or extensions of or to the Gateway API ("Derivative Works"), including any related Intellectual Property Rights, regardless of whether Wells Fargo or its third-party suppliers creates such Derivative Work. Wells Fargo will have the exclusive right to apply for such Intellectual Property Rights as it wishes with respect to the Derivative Works. You agree to execute such documents, render such assistance, and take such other action as Wells Fargo may reasonably request, at Wells Fargo's expense, to apply for, register, perfect, confirm, and protect Wells Fargo's rights in the Derivative Works including (without limitation) an assignment of copyright. Without limiting the foregoing, Wells Fargo will have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the Derivative Works. You hereby waive any and all rights, including any right to identification of authorship or limitation on subsequent modification, that You (or Your employees, agents or consultants) have or may have in any Derivative Works. You will not remove, modify, or obscure any copyright or other proprietary notices on the Gateway API or the Documentation.

2.5 Updates. From time to time Wells Fargo may, at its discretion, release Updates. In the event Wells Fargo so notifies You of any such Update, You shall integrate and install such Update into Your systems within thirty (30) days of Your receipt of such notice. You acknowledge that failure to install Updates in a timely fashion may impair the functionality of the Platform or any Gateway Services provided hereunder. Neither Wells Fargo nor its third party suppliers will have any liability for Your failure to properly

install the most current version of the Gateway API or any Update, and Wells Fargo will have no obligation to provide support or services for any outdated versions.

2.6 Licensors. The licenses granted hereunder may be subject to other licenses currently held by Wells Fargo. Should any license held by Wells Fargo to certain technology or Gateway API be terminated or suspended, the corresponding license(s) granted to You hereunder may also be terminated or suspended in the sole and absolute discretion of Wells Fargo. You acknowledge and agree to such potential termination or suspension. If, pursuant to this Section, Wells Fargo terminates any license(s) granted to You hereunder, You shall have the right to terminate this Agreement immediately without penalty.

2.7 Export Compliance. You agree not to export or re-export the Gateway API or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Gateway API or underlying information or technology may be downloaded or otherwise exported or re-exported (i) to any country to which the United States has embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (iii) in a any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. If You have rightfully obtained the Gateway API outside of the United States, You agree not to re-export the Gateway API except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which You obtained the Gateway API. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

2.8 Return/Destruction. Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, You shall either return to Wells Fargo or destroy the Gateway API and the Documentation, and shall so certify to Wells Fargo in writing.

2.9 No other Licenses. Except as expressly provided above, no license for any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted hereunder.

2.10 Use of Transaction Data. As permitted by applicable law and regulations, Wells Fargo reserves the right to copy and distribute to third parties any information associated with Your use of the Gateway API or Your activities on the *Wells Fargo Payment Gateway*.

3. Service and Service Descriptions

In addition to use of the Wells Fargo Payment Gateway service, You may subscribe for use of optional Gateway Services, subject to Wells Fargo's approval. Wells Fargo shall provide such elected Gateway Services in accordance with this Agreement and, any terms or conditions applicable specifically to such Gateway Service(s) which are described in the applicable Service Description. Each Service Description shall be effective with respect to You, upon the earlier of: (i) Your first use of the applicable Service; or (ii) confirmation notice by Wells Fargo that You have been approved for the Service and that the Service is now available to You. Wells Fargo may terminate Your rights to use a Gateway Service based on failure to comply with this Agreement (which includes the applicable terms specific to such Service) without terminating this Agreement or other Gateway Services, however, a termination of this Agreement will terminate all Gateway Services.

4. Platform Matters

4.1 Integration with Your Systems. While Wells Fargo provides the Gateway API to You, You acknowledge that the Gateway API and/or hosted order page may by itself be insufficient to allow Your Systems to function with the Platform. Wells Fargo will provide the initial technical documents and software development kits, along with a Project Manager, to assist You with implementation; however, programming, development and maintenance of Your Systems and their functionality are Your sole responsibility. You have the sole responsibility to select and employ any competent programming agent(s) to accomplish the

programming required to make Your Systems function correctly with the Platform and the payment services contemplated hereunder ("Integration"). You shall be responsible for all technical support for Your Systems and Integration related issues. You agree that You will use commercially reasonable efforts to complete the Integration as soon as possible. You will be responsible for all of Your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Agreement, You acknowledge that unless and until You complete the Integration, no services need be provided by Wells Fargo to You pursuant to this Agreement, except as otherwise specifically provided in Section 4.2 below. In addition, You acknowledge and agree that, even if you have completed Integration, if You have not entered into a valid merchant processing agreement with processor acceptable to Wells Fargo you cannot receive payment processing services through the *Wells Fargo Payment Gateway* service.

4.2 Set-Up Assistance Services. Subject to Section 4.1 above, upon Your request to Wells Fargo, and upon payment of any applicable Fees contained in Exhibit C of the Fiscal Agent Agreement, Wells Fargo will provide You with set-up services to assist with the Integration.

4.3 Shut Downs. Wells Fargo reserves the right, from time to time, without prior notice, to shut down and restart the Platform for maintenance and/or Gateway API upgrades; provided, however, that Wells Fargo will provide you with commercially reasonable prior notification if Wells Fargo anticipates the need to shut down the platform for more than 1 hour. Wells Fargo will use reasonable effort not to impact Your use of the Platform during business hours.

4.4 Orders by Customers. You are solely responsible for accepting, processing, and filling any orders for purchases by Your Customers, and for handling any inquiries arising therefrom. You shall use the highest standards in the industry in responding to complaints by Customers. Neither Wells Fargo nor its third party suppliers will be responsible or liable for any unauthorized access to Your data or Your Systems by any means or device.

5. Confidentiality. You shall not disclose the Confidential Information to any third party, or use the Confidential Information in any manner except as explicitly authorized under this Agreement except as may be required under the Inspection of Public Records Act. You agree to use the same degree of care to prevent disclosure of the Confidential Information as You use to protect Your own confidential information, but in no event less than a reasonable standard of care. In the event of any unauthorized disclosure of Confidential Information, You shall immediately provide Wells Fargo with written notice of the details of such disclosure (including but not limited to the identification of the receiving party).

6. Security of Information.

6.1 You agree that You will comply with all required security standards at all times during this Agreement. Any failure to comply with such security requirements: will permit Wells Fargo to suspend the *Wells Fargo Payment Gateway* service; and/or shall constitute a material breach of this Agreement and permit termination for cause under Section 1 above. Without limiting the foregoing, you specifically agree to comply with all Card Association Security Requirements including, without limitation, the Visa Customer Information Security Program (CISP), the MasterCard Site Data Protection Program (SDP), Payment Card Industry Data Security Standards (PCI), any other applicable Association requirements regarding data security, and any additional security requirements provided to you from time to time by Wells Fargo. The Visa and MasterCard Security Standards can be currently found at:

http://usa.visa.com/merchants/risk_management/cisp.html; and
http://www.mastercard.com/us/merchant/security/sdp_program.html.

If any Wells Fargo security requirements provided to you are changed, Wells Fargo shall provide You with notice of such changed security requirements, and You shall have thirty (30) days (or a longer period as may be agreed to between the parties) to make the changes necessary to comply with the changes to such Wells Fargo security requirements.

6.2 Wells Fargo shall be responsible for the security of data once it becomes part of the *Wells Fargo Payment Gateway*, and shall comply with applicable laws and Card Association requirements as they relate to the security and processing of this data. Data will become part of the *Wells Fargo Payment Gateway* when it has been received by Wells Fargo from Your systems, and data will cease to be part of the *Wells Fargo Payment Gateway* when it has been received by the processor from Wells Fargo.

7. **Privacy.** You agree that, during the term of this Agreement, You will adequately communicate and comply with an appropriate privacy policy explaining Your online collection and use of the personal information of Your Customers ("Privacy Policy"). Unless required by law, Bank Card Association Rules, or done pursuant to this Agreement, You shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any Customer's account information, transaction information, or other personal information to any third party. You shall store all data securely.

8. **Audit Rights.** Upon commercially reasonable advance notice to You, Wells Fargo may audit Your usage, records and security of the Gateway API, Your Customer's payment processing information, and the Gateway Services provided hereunder to ensure (i) that You are using the Gateway API and the services in full compliance with the provisions of this Agreement; (ii) that all applicable fees have been paid; (iii) that You are adhering to Your Privacy Policy; and; (iv) that You are in full compliance with all applicable laws, regulations and rules (including but not limited to Bank Card Association rules). Any such audit shall be conducted during regular business hours at Your offices and shall not interfere unreasonably with Your business.

9. **Assignment of Agreement or Processing for Others.** You may not assign this Agreement without Wells Fargo's prior written consent. You may not transfer or sell Your rights under this Agreement. You are prohibited from processing payments for or on behalf of any other individual or business. Use of the Wells Fargo Gateway or Gateway Services is provided for single Merchant Accounts only.

10. **Legal Responsibility.**

10.1 **Enforcement.** In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, You shall: (i) promptly notify Wells Fargo of the Claim(s) or legal action; (ii) reasonably cooperate with Wells Fargo in the making of any Claim(s) or defense(s); and (iii) provide information and assist in the resolution of the Claim(s).

10.2 **IP Infringement.** If the *Wells Fargo Payment Gateway* service (or any part thereof) is claimed, or is adjudicated, to be infringing any patent, copyright or any other intellectual property right of any third party, Wells Fargo, at its option and own expense, may take one or more of the following actions:

- (i) secure for You the right to continue using the *Wells Fargo Payment Gateway* service at no additional charge to You;
- (ii) replace or modify the *Wells Fargo Payment Gateway* service to make them non-infringing without material reduction of functionality; or
- (iii) terminate this Agreement or any applicable Gateway Service.

Wells Fargo (or its third party suppliers) shall have no liability for any claim of infringement based on (i) products or services of Wells Fargo (and/or its third party suppliers) which have been modified by parties other than Wells Fargo (or its third party suppliers); (ii) Your failure to install upgrades or patches provided by Wells Fargo (or its third party suppliers) where such upgrade or patch would have removed the infringing condition; or (iii) Your use of the Gateway Services with software or hardware not authorized by Wells Fargo (or its third party suppliers), where such use with such other software or hardware gave rise to the infringement claim.

11. [Reserved]

12. [Reserved]

13. Your Representations. You represent all of the following: (i) You are engaged in a lawful business, which includes the sale of merchandise and/or services; (ii) You shall not submit any payment transactions that violate any laws of any related state, county, city, or country or any bankcard association rules and shall otherwise comply with all applicable laws, regulations, or rules in connection with Your obligations under this Agreement; (iii) That You shall be responsible for any fines, penalties, fees or assessments imposed by a Bank Card Association based upon Your (a) use of the *Wells Fargo Payment Gateway Service* or (b) noncompliance with a Bank Card Association's rules or requirements; (iv) That Wells Fargo may use subcontractors to provide some or all of the *Wells Fargo Payment Gateway* service, and shall have the right to terminate or retain subcontractors in Wells Fargo's sole discretion; (v) That Your installation, configuration and use of the Gateway Services shall conform to specifications set forth in the Documentation; (vi) That You shall bear (a) all collection risk (including without limitation, credit card fraud and any other type of fraud) with respect to sales of its products; and (b) all responsibility and liability for the proper payment of all taxes that may be levied or assessed (including without limitation, sales taxes) in respect of sales of its products; (vii) That You shall be solely responsible for maintaining complete backup records of all information relating to orders, inquiries, and purchases and any information submitted to Wells Fargo (or its third party suppliers) for the purpose of providing the Gateway Services; and (viii) that in the event of a conflict between the terms of a Service Description and this Agreement, the terms of this Agreement shall govern.

14. Notices. You agree to notify Wells Fargo of any change in Your name, type of business, or any other information required on Your merchant processing application at least thirty (30) business days prior to the effective date of change. Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's last known address or number, and shall be hand delivered or delivered by facsimile transmission, overnight courier or certified, registered, regular mail or e-mail. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission or e-mail; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein. Until changed by subsequent written notice to You, Wells Fargo's address for notices under this Section shall be: Wells Fargo Bank, 1200 Montego Way, Walnut Creek, CA 94598, Attn: Merchant Services.

15. [Reserved]

16. [Reserved]

17. Severability and Interpretation. If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda, shall be interpreted in favor or against any party because such party or its counsel drafted this Agreement or such addenda. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. As used in this Agreement, (i) the term "include," or any derivative of such term, shall not mean that the items following such term are the only types of such items; (ii) the term "shall" indicates a mandatory obligation; (iii) the term "may" indicates a permissive election and does not imply any duty to exercise such election; and (iv) the term "discretion" means the sole and absolute discretion of the party granted the discretion, absent an express limitation on such discretion.

18. Amendment and Waiver. Any modification, amendment or waiver of any of the terms and conditions of this Agreement shall be pursuant to Section 2 of the Fiscal Agent Agreement to which this Agreement is attached as Exhibit G.

19. [Reserved]

20. **No Unauthorized Publicity.** You shall not use the name, marks or refer to the identity of Wells Fargo in advertisements, publicity releases, promotional materials or marketing correspondence without first securing the written consent of Wells Fargo.